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CRIMINAL COURT PROCEDURES IN THE CHINESE PEOPLE'S REPUBLIC

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/Following is the translation of the book Ugolovnoye Sudoproizvodstvo Kitayskoy Narodnoy Respubliki (English version above) by V. Ye. Chugunov, Moscow, 1959, pages 1-286./

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INTRODUCTION

The Chinese People's Republic (CPR) is extremely interesting due to its originality of development. "The Communist Party of China (CPC) applies many unique forms in building Socialism . . . We know that China has its own peculiar features in its historical development, population, level of production and national culture."[1] All of these peculiar features cause the unique nature of legal development in China. The formation of the CPR was preceded by a lengthy and stubborn struggle on the part of the heroic Chinese people against foreign imperialism and Chinese feudalism. A sure path to victory was shown to the Chinese people by the Great October Socialist Revolution which formed the beginning of the era of revolutions of liberation in colonial and dependent countries, as well as the era of the arousing of the proletariat, and its hegemony in the struggle for national liberty.

The neo-democratic phase of the Chinese revolution began with the "4th of May movement" of 1919 and included the civil revolutionary wars of 1924-1927 and 1927-1937, the national war of liberation with Japan in 1937-1945, the civil revolutionary war of 1945-1949 and basically came to an end with the founding of the CPR in 1949. The destruction of the old apparatus of state and creation of a new state and, consequently, the liquidation of old criminal procedure and the creation of the new is joined with the peculiarities of the Chinese revolution, which proceeded in an armed fashion from the periphery to the center and had several periods in its development as shown above.

During the course of the first revolutionary period, the period of the first revolutionary civil war, the basis of the future People's Court was laid. In 1925, a large-scale strike took place in Canton and Hong Kong, the organizational and directing organ of which was the strike committee, formed by the Communist Party, which consisted of 800 representatives. It contained and had jurisdiction over a legal section, administrations of cadres, legislation, control, as well as a finance committee, a prison, armed security forces, hospitals, schools and other institutions.

The authority of the peasant unions increased tremendously in the rural areas during the first revolutionary civil war. "In counties where the peasant movement is particularly strong, the word of the peasant union possesses an almost magical force. If in the morning the union demands that Tuhao or Leshen be arrested, the chief county

official would not put this off until noon. If the union demanded that the arrest be made at noon, the chief official would not dare delay until evening."[2]

Under conditions whereby the revolution suffered defeat and Chiang Kai-shek established reactionary rule, the task of the Communist Party consisted in showing the people the necessity of continuing the revolutionary struggle. (However, the CPC and the Chinese people were neither to be intimidated, subdued or destroyed. They rose from the ground, wiped off the blood, buried their dead comrades and once again took up the combat. They raised high the banner of revolution and spread armed resistance.)[3]

After the founding of the Temporary Central Government of China for the purpose of a rapid restoration of revolutionary order, securing and preservation of life, rights and property of citizens and the final liquidation of counter-revolutionary organizations and counter-revolutionary activities by individuals, a special session of the Executive Committee of the CPR on 13 December 1931, passed Decree No. 6 on punitive measures for counter-revolutionary activities. The decree contained instructions on the formation of judicial organs. In particular, paragraph nine stipulated that legal sections could be formed in the provincial, county and regional governments to function as temporary judicial organs until the formation of courts. In February 1932 the CEC (Central Executive Committee) of the CPR published temporary instructions on the activities on the legal division and temporary instructions on military tribunals, and on 9 July 1932 it published temporary regulations on the organization of legal sections and proceedings.

The legislative act published by the CSR established the democratic principles of criminal procedure. The temporary regulations on the organization of legal sections and proceedings provided for the participation of lay assessors in "proceedings." It was provided that the lay assessors were to be elected by trade unions, unions of farm laborers and popular collectives. The lay assessors participated in the review of the cases in courts, and they were closely joined to the masses. Their activities signified the participation of the workers in government on a large scale.

The right of the accused to defend himself was proclaimed. The accused could send a representative to take part in the trial in order to defend his interests. The temporary regulations established the principles of public trial, with the exception of cases whereby the trial might bring out a state or military secret. In all cases the

court decision was a matter of public record.

In view of the changing situation, the CEC of the CSR issued Order No. 5 on 8 April 1934, which abrogated all previously published laws and decrees by the government on the organization of courts, the procurature and legal proceedings and established "a new judicial system in the CSR." However, the court and procurature system which was functioning at that time was not liquidated, and only the forms of their activities were changed. The purpose of Order No. 5 was to lend aid to organs of justice in the armed combat and to take the most decisive measures for suppressing counter-revolution, securing the interests of the people and strengthening Red power.

Under the conditions of Chiang Kai-shek's capitulation to Japan and the continuing advance against the Chinese Red Army, Japanese imperialism became more and more insolent. On 7 July 1937 the Japanese imperialists, intending to seize the whole of China by force of arms, provoked an incident at Lukouchiau. The Chinese people unanimously demanded resistance against the Japanese invaders. The Kuomintang government, attempting to minimize the significance of this conflict, began negotiations with the Japanese invaders.

"Within the country three different forces existed, incorporated in the people, the Kuomintang and the national traitors. The people took a firm stand against Japan. The worker class and the peasantry were the leaders and the main force in the war against the Japanese invaders."[4] The Kuomintang was forced, under pressure by the masses, to form an agreement with the Communist Party on putting an end to the civil war. A national anti-Japanese front was formed.

The CPC, expressing the interests of the masses who were fighting against Japan in forming a united front with the Kuomintang, insisted at all costs on the principle of the independence of the Communist Party within the united front.

The basic tasks of the legal and procurator's organs in the liberated regions, as stipulated by the Communist Party and Comrade Mao Tse-tung, were supported in the struggle against the Japanese aggressors, defense of democratic authority, defense of the rightful interests of all strata of the population and the punishing of traitors and counter-revolutionaries. Judicial and procuator's organs also led an active struggle against banditry and crimes which disrupted the united front and the democratic system of authority.

During the period of the war with Japan many points

of support in the struggle against the Japanese aggressors were formed by the Communist Party behind enemy lines. The most extensive regions under the control of the National Goverment and the Communist Party were Shensi-Kansu-Ningsia and Shansi-Chahar-Hopeh. Between 1938 and 1943 30 local People's Courts of the Shensi-Kansu-Ningsia region alone tried 10,112 cases, 26% of these being criminal cases, primarily cases of robbery and treason.[5]

The administrative-political program of the Shensi-Kansu-Ningsia border region of 5 May 1945 stipulated in paragraph 6 that, other than judicial organs and organs of public security, no other organizations or military units possessed the right of arrest and interrogation. The 1942 regulations on the preservation of personal and property rights of citizens contained a similar decree. (paragraph 7). Paragraph 8 of these regulations stipulated that in order to arrest a criminal it was necessary to possess sufficient evidence showing his involvement in criminal activities, and the arrest itself was to be conducted in a lawful manner. In the Shansi-Chahar-Hopeh region the Political Program of the Political Bureau of the CC (Central Committee) of North China (13 August 1940), and the Administrative Program of the regional committee was based on this (20 January 1943). These documents also contained regulations insuring the legal rights and interests of citizens. Paragraph 6 of the Political Program stipulated the following: "In the interests of defending the rights of the individual no organization, collective or group of citizens shall possess the right to place citizens under arbitrary arrest or detain in an unlawful manner, nor shall they have the right to defame citizens or subject them to indignities, unless provided by law."

In order to insure correct procedure in criminal and Civil matters as well as in order to supervise the activities of the lower courts, judicial supervision was established in the Shensi-Kansu-Ningsia border regions, which was carried out by higher courts by means of reviewing protested and appealed cases, as well as by reviewing all capital sentences by a higher court. All such sentences, if delivered by local courts, had to be ratified by the Higher Court, irregardless of whether these sentences were appealed. In the Shensi-Kansu-Ningsia and Shansi-Chahar-Hopeh border regions, a people's procurator's office, which was subjected to reorganization as the concrete situation changed, had existed from the the first years of the formation of the people's authority. The functions of the procurator's office in the Shensi-Kansu-Ningsia region were stipulated in the regulations on the organization of the Supreme Court. The procurator's office investigated

criminal cases, collected and reviewed evidence, instituted indictment proceedings and effected control over the carrying out of sentences. Based on the regulations on the organization of the People's Courts, in the Shansi-Chahar-Hopeh region the procurator's office conducted investigations in criminal cases, initiated indictment proceedings, supported the prosecutor during the trial and carried out functions stipulated in other laws or decrees.

The basic function of the procurator's office was public prosecution, which played a great role in educating the masses to combat crime. According to figures on the Shensi-Kansu-Ningsia region, from 1939 through the first six months of 1941, in more than 20 counties in the region, more than 80% of the 4,553 criminal cases handled by the courts were initiated by the procurator's office.[6] The reactionary clique of the Kuomintang, which represented the interests of the large landowners and bourgeoisie, which set up its reactionary rule during the war with Japan, heightened to an extreme degree the contradictions between the worker class, the peasantry, the city and national petty bourgeoisie. After the victory of the Soviet Union over Japanese imperialism and the capitulation of Japan, American imperialism attempted to take Japan's place in China, transforming China into a colony of the United States. For this purpose the United States extended aid to the Kuomintang with the purpose of destroying the Communist Party, since it was the greatest obstacle in the path of achieving this goal. The CPC sought to preserve peace with all its might as well as for the creation of a mighty democratic Chinese state, and it fought against a new civil war. However, the Chiang Kai-shek faction of the Kuomintang, supported by American imperialism, in June 1946 began a civil war in spite of the fact that all classes of Chinese society were demanding peace, the restoration of national independence, democratic reforms and restoration of the national economy, which had suffered great losses in the wars.

The activities of judicial organs during the period of the Third Civil War were directed at securing the victory of the revolutionary war. Certain liberated regions were temporarily occupied by the enemy, and judicial functionaries defended the people's authority with weapon in hand. In regions where the authority of the People's Government had been established, judicial organs which had been formed during the war with Japan continued to operate. Parallel with this the agrarian reform was beginning to take place all over the country. In order to punish those elements which resisted the agrarian reform and which were committing acts of sabo-

tage with the purpose of blocking the revolution, people's tribunals were formed. In October 1948 the North China People's Government issued Decree No. 3 which contained the basic regulations of legal procedure. In particular, it provided that decisions in criminal cases must be announced by a judicial committee consisting of responsible administrative officials of people's organs, equal in degree and judges to a court.

The judicial system consisted of four levels of courts: county people's courts, district people's courts, provincial people's courts and the North China governmental people's court (Decree No. 4). Common criminal cases were tried in two instances. In all liberated regions, and in 1949 throughout the entire territory of the CPR, all former Kuomintang judicial organs were liquidated and revolutionary courts were formed. At the end of the war of popular liberation the CC of the CPC issued instructions to punish war criminals and abrogate the Kuomintang constitution and laws, as well as instructions to liquidate the six codes of the Kuomintang and to establish in the area of justice the judicial principles of the liberated regions. The publication of these acts completed the elimination of the former Kuomintang legislation.

On 1 October 1949, in Peking, the former capital of China, the formation of the Chinese People's Republic was proclaimed at a session of the People's Political Consultative Council (PPCC). An end was put to the more than 100 year old imperialist yoke and the 22-year period of reactionary rule by the Kuomintang. Thus a new era began in the history of China: the Chinese revolution entered its last stage--the stage of Socialist Revolution. Now the CPR is in the process of transformation into a flourishing mighty socialist power.

After the liberation of the entire country, judicial activities in the CPR, under the leadership of the Communist Party, achieved great success in the defense of the popular-democratic system, the support of the social order, the preservation of public property, the defense of the rights and lawful interests of citizens, in insuring the success of socialist construction and socialist reformation. A judicial reform took place and the judicial structure was formed anew.

On 4 September 1951 the Central People's Government Council issued regulations on the temporary organization of the people's courts of the CPR. Later, on the basis of the constitution of 21 September 1954, the All-Chinese Assembly of People's Representatives, first convocation, passed a law on the organization of people's

courts in the CPR and a law on the organization of the People's Procurator's Office of the CPR. Since there is yet no code of criminal procedure in the CPR, the legal basis for court activities, the procurator's office and investigation are those laws, the so-called Experimental Procedure in conducting investigations by the People's Procurator's Office of all levels and the Temporary Rule for trying criminal and civil cases, developed in 1956-1957, in accordance with the Supreme People's Procurator's Office and the Supreme People's Court. These regulations are still in effect. The publication of the Experimental Procedure and the Temporary Rules formed the turning point in the development of criminal procedure in the CPR. Making use of the rich experience in judicial and investigative work in the liberated regions, the experience gained after liberating the country, and studying the experience of the Soviet Union and other Socialist countries, the CPR is creating a new, socialist criminal procedure.[7]

In this work an attempt is made to view all stages of criminal procedure in the CPR, although the scope of the book does not allow us to make a detailed investigation of the entire field of criminal procedure. The primary content of the book is based on a study of available legislative acts and practices of the People's Courts, the Procurator's Office and organs of investigation in 1955, 1956 and 1957[8], since, in the opinion of the author, this period witnessed the formation of the present system of criminal procedure, and these years were the most characteristic for the establishment of the new popular-democratic criminal procedure. Much of the material in this book is being used for the first time.

CHAPTER ONE

PRINCIPLES OF CRIMINAL PROCEDURE

All principles of popular-democratic criminal procedure in the CPR are mutually interconnected and, in their unity, characterize the criminal procedures of China as procedures of a state of a socialist type, as genuinely democratic procedures. The principles of socialism, including socialist democratism, basically differentiate the law of the CPR from bourgeois law. The laws of the CPR guard and strengthen popular-democratic social relationships, the basis of which is public ownership of means of production. In the CPR the laws are equal for all citizens, and the courts are equal and alike for all, independent of race or nationality, sex, occupation, social origin, religion, economic position or way of life. This expresses the genuine popular nature of the law, which is the complete opposite of anti-popular and reactionary law in imperialist states, which is based on discrimination, as well as class, national, and racial inequality.

The principles of Chinese criminal court procedure form the basis for the activities of judicial-investigative and procurator's organs, during the investigation, trial and sentencing of criminal cases, and express those features of the popular-democratic process which have the greatest social, political and juridical significance. This does not mean, however, that each principle of criminal procedure must be used in all stages of the process without exception. A certain principle which is extremely significant in one stage may not be quite as significant in another stage or even be completely unacceptable for that stage. In summarizing the principles of Chinese criminal procedures the author has not attempted to form a new and special system of principles. He has based himself on the 'Constitution of the CPR. In addition, summarizing the principles of procedure, the author has taken into account those regulations bound in the laws on the organization of the people's courts and the people's procurator's office. If a certain principle does not appear concretely in the constitution or in the laws on the organization of people's courts and the people's procurator's office of the CPR, the author has guided himself according to data from analyzing investigation and judicial practice.

1. People's Democratic Legality

The Eighth All-Chinese Congress of the CPC devoted much attention towards increasing legality in the country. In the political report by the CC which was given by Liu Shao-chi, the following is stated: "In order to strengthen the democratic dictatorship of the people, to strengthen the order which insures socialist construction and the preservation of the democratic rights of the people, and in order to punish counter-revolutionary and other criminal elements, it is necessary to approach, considering this one of the present day's urgent governmental tasks, a systematic development of a sufficient quantity of completed laws, and to strengthen legality in our country."[1]

The Congress severely censured the incorrect tendency to ignore legality and took several measures aimed at strengthening party leadership over juridical work. The resolutions of the congress stated that it was necessary to further strengthen people's democratic legality in the country and stressed that "all state organs and state employees must strictly observe the laws of the state in order that the democratic rights of the people would be fully insured by the state."[2] The principle of legality is an extremely important principle of the Chinese people's democratic state, which carries out the function of the dictatorship of the proletariat. " . . . people's democratic legality expresses, through the apparatus of government, the will of the masses themselves, led by the worker class. It is an important weapon in effecting the democratic dictatorship of the people in our state."[3]

People's democratic legality is one of the methods of effecting the dictatorship of the people, defending the interests of the workers, peasants and the entire worker class in their struggle against the class enemies. The worker class, implementing the state leadership of society, proclaims and strengthens the economic , political and other rights of the workers in the legislative system. While still at the stage of neo-democratic revolution, the Chinese people, under the leadership of the Communist Party, established Red authority in many areas of the country. Laws, decrees and resolutions were issued even then which reflected the revolutionary will of the people and which played a great part in the war of liberation. Irregardless of the fact that these laws were of a local nature, they formed the beginning of new People's democratic legality in China.

Soon after the rule of imperialism, feudalism and bureaucratic capitalism was overthrown in the country and the revolutionary authority of the victorious people was

established everywhere, the CC of the CPC passed a resolution abrogating the six codes of the Kuomintang and establishing principles of legislation which had been effective in previously liberated areas. In this manner the false Kuomintang "legality" was eliminated and a truly democratic legality was established on a national scale. During the first years after the formation of the CPR the basis of people's democratic legality was the General Program of the PPCC, which acted as a temporary revolutionary constitution. On the basis of its principles, taking into consideration the experience of the struggle of the masses, laws and regulations were published which insured democratic reforms in the country, the suppression of reactionary classes and the rapid development of the economy and culture.

Since the entire country was liberated 4018 different laws and decrees have been drawn up and promulgated. These had a tremendously important significance in regulating and directing all facets of social life and furthered the success of socialist construction in China.[4] New tasks arose before the legislative organs of the country in view of the beginning of economic construction on a large scale, based on the First Five Year Plan. This is understandable. Planned construction demands a model social system, clear-cut labor organization and centralized leadership, as well as the unified efforts of hundreds of millions of persons.

The government of the CPR, in a directive on strengthening the functions of people's justice, noted that although present legislation is not complete, the "General Program of the PPCC of China, the law on the organization of the Central People's Government of the CPR and other laws, decrees, directives and resolutions passed by the Central People's Government Council, the State Administrative Council, the People's Supreme Court, and other organs, can serve as a basis on which to build the functions of the judicial organs."[5]

Until the Constitution was promulgated in 1954, 3485 statutes and decrees had been passed. After working out the primary variations of many laws, a mass discussion took place, and later, taking into consideration valuable comments made during the discussion, the laws were worked into final shape and published.[6]

On 20 September 1954 the First Session of the All-Chinese Assembly of People's Representatives--first convocation--ratified the constitution of the CPR. The ratification of the Constitution meant the beginning of a new stage in people's democratic legality. Legality was be-

coming a most important constitutional principle. Many statutes and decrees were developed on the basis of the Constitution.[7]

People's democratic legality is a powerful means of implementing the tasks of socialist construction. It secures the stability of the people's democratic system, determines the competence of organs of authority, the rights and obligations of persons in public office and citizens, and strengthens state discipline.

Liu Shao-chi stated in a report at the Eighth All-Chinese Party Congress: "Now that the period of revolutionary storms has passed and new productive relations have formed, the task of combat consists in insuring the successful development of the productive forces of society. Therefore, together with changes in the tasks of combat, its methods also change, and in view of this it becomes absolutely essential to have complete legality."[8]

People's democratic legality carries out three basic functions in building socialism in the CPR,[9] which are the following: 1. The punitive function. People's democratic legality appears in the role of a punitive force basically in relation to counter-revolutionary and declasse elements which have been left over from the old society, and also in relation to individual backward elements from among the workers. 2. The function of assurance. Legality in the CPR furthers the successful fulfillment of state plans, the development of the cooperative movement, and assures the correct use and essential limitation of private capital existing in the country. 3. The function of education, consisting in the fact that the introduction of legality leads to the education of the masses in the spirit of the principles of socialism.

People's democratic legality plays a particularly important role in improving the operations of the apparatus of state, including the courts and procurator's office, the task of which is the fight against crime. "All of our state institutions," Liu Shao-chi said, "should strictly observe the laws, and the organs of national security, the procurator's office, and the courts should subsequently introduce a system of division of responsibility and mutual control over the implementation of legality."[10]

The principle of people's democratic legality received subsequent implementation in criminal procedures in the CPR. Article 18 of the Constitution requires all employees of state organs to conform to the Constitution and laws, to be devoted to the people's democracy and to serve the people to the extent of their ability. Thus the Constitution establishes the principle of people's

democratic legality both in court procedures, the procedures followed by the procurator's office and the organs of state security. This principle is also expressed in the laws on the organization of the people's court and the people's procurator's office of the CPR.[11]

The ratification and promulgation of the Constitution of the CPR and the laws on the organization of the people's court and the people's procurator's office increased even more the demands of the party and government for the strict observance of legality. Carrying out these demands, the courts and procurator's office improved the quality of investigation and trial of criminal cases, and strengthened the observance of guarantees in criminal proceedings. The implementation of legality by people's courts is furthered by the control over their activities by the People's Supreme Court and the control function carried out by higher judicial organs, as well as the procurator's supervisory powers.[12] In addition, the people's court at all levels, the organs of state security and the procurator's offices coordinate their activities and exercise mutual supervision.

In relationship to all legal proceedings initiated by the procurator's office, the people's court conducts a careful check, investigating all circumstances of the case in order to establish objective truth in the verdict. At the same time, if the procurator's office discovers that the court has issued an improper or wrong verdict, it lodges a protest to the court of appeal or within the framework of judicial supervision. If the people's court reviews a case and actually discovers an error in the verdict, it will reverse the decision. In 1955 three percent of all criminal cases initiated by the people's procurator's offices of all levels were not taken to court. These cases were either sent by the court for further investigation or dismissed for lack of evidence. On the other hand, according to the data of fourteen provinces and cities, people's courts have already reviewed the verdict of more than 80% of those cases which were protested by the procurator's office.[13]

The people's courts usually try cases without delay and do not allow them to clutter up the calendar. In 1955, in courts of all levels(first instance), the number of cases tried and the number of cases completed were almost equal: cases which reached a decision made up 95% of all cases tried. Figures for February 1956 testify that in the people's courts of many areas of the CPR the number of cases tried is equal to the number placed on the calendar.

The implementation of the principle of people's democratic legality is expressed, in particular, in the strict observance of the rights of the individual in criminal procedure. Much attention is devoted toward securing the rights and legal interests of the accused, as well as insuring the accused of the rights of defense. In the functions of the people's democratic state in carrying out justice, the defense of the rights of the accused contributes to the correct solution of the tasks before the court. Violation and distortion of people's democratic legality is viewed as a violation of the rights of the accused.

As a result of the introduction of many social reforms and social transformations after the liberation of the country, the consciousness of the masses increases day by day, the social system becomes stronger, and people's democratic legality is observed. Testimony to this is the decrease in the number of cases going before the courts. For example, in 1955, the number of cases of crimes in the area of marital-family relations decreased 24.8% lower than that of 1954. The number of cases dealing with robbery and economic crimes by capitalists, etc., also decreased significantly.[14]

According to figures from eleven provinces and large cities (Szechwan, Honan, Shansi, Shensi, Kansu, Chekiang, Kwangsi,[15] Heilungkiang, Peking, Tientsin, Shanghae), the number of criminal cases during the first three months of 1956 decreased 33.7% in comparison with the number of criminal cases during the corresponding period of the preceding year. In the province of Liaoning the number of criminal cases in the fourth quarter of 1955 decreased 55% in comparison with the third quarter, and in January-February 1956--34% in comparison with November-December 1955.[16] In Canton the number of criminal cases in the first six months of 1956 decreased 23.7% in comparison with the same period of the previous year. Losses sustained by the public due to criminals decreased 31.6%.[17]

For the country as a whole, we can include the following interesting figures.[18] If we take the number of criminal cases tried during 1951 as 100%, including cases against counter-revolutionary elements, each year the following percentages were recorded: in 1952--74.1%, in 1953 --66.6%, in 1954--76.9%, in 1955--91.6% and in 1956--48.3%.[19] In 1955 the number of cases increased due to the renewal of the campaign for suppressing counter-revolution. These figures testify to the further strengthening of the democratic dictatorship of the people and the even greater stabilization of the social order. In the future, due to greater strengthening of the revolutionary dictatorship

the continuous development of socialist construction, the strengthening of people's democratic legality and increasing the organization and consciousness of the masses, the number of trials will decrease systematically.

The system of judicial supervision, which was established by the law on organization of the people's courts, is extremely important for strengthening the principle of people's democratic legality in trying criminal cases. This is furthered to a considerable degree by the operations of the people's courts "in social investigation," the purpose of which is the study of local operations in the elimination of law infractions. The people's court has as its task to keep up with all changes in all areas of the life of a given locality. During the time of the increased activities of the cooperative movement in the village, the courts studied the local situation in order to learn what criminal elements, who were sabotaging the cooperative movement, were located in the villages, what means they used, what were the results of their criminal activities, were they getting stronger or weaker, and what changes took place in peasant relationships after the cooperativization.

The local courts, studying and investigating these questions, aided the party in carrying out the policy of cooperativization. In addition, this made it possible for the courts to become acquainted with reality, and in trying concrete cases, to obtain the necessary materials, a fact which, naturally, aided in the observance of legality in rendering decisions. The people's courts of all levels systematically summarize cases which had been completed and thus bring out the shortcomings present in the operations of certain organizations and functionaries. Coming forth with proposals for the improvement of the operations of these organizations and individuals, the courts at the same time aid in the strengthening of legality in the country.

Together with a further increase in the quality of cases tried, the people's courts do much to educate the population in the spirit of observing legality. The functionaries of people's courts often give public lectures in which they reveal the democratic nature of the laws, and their significance in daily life, giving concrete examples from actual practice. An important role in strengthening legality in the country is played by the people's procurator's office. The constitution of the CPR (Article 81) and the Law on the organization of the people's procurator's office of the CPR (Articles 3 and 4) delegate the People's Supreme Procurator General's Office and its local organs with supervision over the observance of laws

by organs subordinate to the State Council, local state organs, functionaries in the apparatus of state and citizens. The organs of the procurator's office conduct an active struggle against counter-revolutionary elements. They check the approval of arrests, initiate criminal proceedings in court, and arrest counter-revolutionaries and other criminals. By supervising court trial they prevent false arrests and preserve the democratic rights of the people. At present organs of the procurator's office have been set up almost everywhere. A firm foundation has been laid for perfecting the operational work and forming the conditions for implementing the other functions of the procurator's office, in particular, general supervision.[20] Conducting general supervision, the people's procurator's office at the same time increases the struggle against unlawful actions by state employees. Learning of the unlawful acts of a functionary, the procurator's office reports this to the place of employment. If it is discovered that the given act bears the nature of a crime, in correspondence with established rules an investigation is conducted and the culprits are charged with criminal responsibility.

Taking into consideration that a rapid and correct solution to the complaints of workers is of great significance in strengthening people's democratic legality, the people's courts and many procurator's offices have organized public reception points, where oral and written complaints are received from the public and some of them are decided on the spot. Such reception points are possessed also by the majority of ministries and departments.

After the Second All-Chinese Conference of Justice Employees (1953) the public reception points unified the previously existing information bureaus, application bureaus for illiterate and barely literate, the duty and conciliation chambers of the courts. In the summer of 1954, according to figures of 22 provinces, ten large cities and the Inner Mongolian Autonomous Region, the people's courts had more than 1200 reception points.[21] Experience in considering complaints coming to the public reception points shows that in many cases these complaints aid in uncovering violations of the law, the activities of individual institutions, state employees and private citizens. In 1955 the People's Supreme Court reviewed the system of handling letters and receiving visitors. Three thousand eight hundred and twenty-five letters were read and 954 visitors were received by the reception point of the People's Supreme Court for a period of 6 months. Of these more than 90% dealt with initiating legal proceedings and more than 60%--with refusal to submit to court decision. Important

letters were handled by the chairman of the court and chairmen of the colleges. They also received visitors in order to solve problems brought by the public in a correct manner and to implement judicial supervision over the operations of lower people's courts. In addition, this manner of receiving private citizens and reviewing their complaints aids in more clear-cut work by the judicial organs.[22]

In Old China a contemptuous attitude toward legislation and jurisprudence developed for centuries.[23] After the formation of the Kuomintang Chinese Republic, the Chinese militarists waged constant war among each other. Under these conditions weapons were the main force, and there was therefore no use to speak of legality. The "laws" promulgated during the period of Kuomintang rule were directed toward masking the class essence of the authority of the exploiters. They deprived the masses of all rights, condemning them to poverty and slavery.

The Kuomintang laws attempted to portray the equality of all before the law. However, there are no actual general interests between the ruling class and the class which is ruled, between the exploiter class and the exploited, between the have's and have-nots, between the lender and debtor, and therefore there could be no real equality before the law.[24] Presently part of the territory of China--the island of Taiwan--is temporarily in the hands of a band of militarists and can give a good picture of so-called bourgeois "legality." The island of Taiwan has a population of approximately eight million, 100,000 of whom are mentally ill. Murders and suicides of the mentally ill are not considered crimes. On 25 January 1957 two mentally ill persons were killed in the city of Taipei.

According to the official figures of the Taiwan Supreme Court, last year the number of criminal cases tried on Taiwan reached an unheard of figure--60,651--the most common crimes being theft and embezzlement. Murder and juvenille crimes have increased sharply. During the first ten months of 1956 alone the number of murders increased 39% in comparison with the same period in 1955. The number of juvenille crimes increased 15%.[25]

2. The Participation of Lay Assessors*in Carrying Out Justice and the Election of Judges

Following the instructions of Lenin on the necessity of attracting the workers toward carrying out the functions of justice, viewing their participation in court as a means of ". . . drawing the poor, one and all, to government (for judicial operations are one of the functions of government)"[26]

*people's assessors

judicial practice and legislation in people's China assured the broad accessibility by workers to a part in the organs of justice. "All state organs," Article 17 of the Constitution of the CPR states, "should be based on the masses, constantly maintain close ties with them, listen to their opinions and function under their supervision." In court operations this principle means primarily the drawing of lay assessors toward the implementation of justice.

Lay assessors began to participate in implementing justice even before the complete liberation of the country from the Kuomintang regime. Laws published in the Red Regions of China provided for the participation of lay assessors in court trials. Lay assessors were elected by labor unions, unions of farm laborers and people's collectives. After the liberation of the entire country the lay assessors were attracted as a rule to the people's tribunals by mass campaign. In people's courts cases (depending on their nature) usually were tried with the participation of temporary lay assessors.[27] However, during the first period, when the land reform had not yet been completed as well as the movement for suppressing counter-revolutionary elements, it was impossible to choose lay assessors by direct election. They were usually appointed on the recommendation of the proper organizations.

The first permanent people's assessors were elected in several cities and regions of the country before the ratification of the Constitution. The elections were conducted together with the election of deputies to the local assemblies of people's representatives. In Tientsin 649 cases were tried during the first few months with the participation of people's assessors, and 501 people's assessors participated in these trials. In 1953, when many social reforms had already been carried out in the country and the consciousness of the masses had increased considerably, election of people's assessors began to be carried out on a broader scale. That year at the Second All-Chinese Conference of Justice Employees the experience of the people's assessors was summarized and a resolution was passed on the universal introduction of the institution of people's assessors in all courts of the first instance. The resolution also indicated the necessity of electing the assessors directly by the population.

With the ratification of the Constitution and the Law on the organization of people's courts, the participation of people's assessors became obligatory. Article 75 of the Constitution of the CPR proclaimed the following: "The

system of people's assessors shall be implemented in trying cases in the people's court according to law." Article 9 of the Law on the organization of the people's court provides that cases in courts of the first instance shall be tried on the collegiate principle, whereby the college shall consist of a judge and people's assessors. The law does not stipulate how many judges and how many people's assessors shall comprise the judicial college trying a case. In practice the judicial college consists of one judge and two people's assessors. In reviewing appealed or protested decisions by people's courts, the judicial college consists exclusively of judges, for the law does not allow the participation of people's assessors in the courts of second instance, where specialized legal knowledge is demanded to a greater degree.

A characteristic particularity of criminal procedure in the CPR is the participation of people's assessors at the preliminary hearing. Thanks to this supervision is assured by the popularly elected people's assessors in respect to the turning of private citizens over to the court for trial, and the practical experience of the assessors is also used in deciding this important question. The principle of participation by people's assessors in the courts penetrates the entire judicial system of the new China. An exception from this principle is allowed only for simple civil cases and insignificant criminal cases, as well as cases specially provided for by law (see Article 9 of the Law on the organization of the people's courts). Chiefly civil cases are tried only by judges, without the participation of people's assessors. The number of people's assessors necessary for the courts of each level and the period of service were determined by the Ministry of Justice (Article 35 of the Law on the organization of the people's court).[28] The participation of people's assessors has a positive effect on the quality of the trial proceedings. Here is a characteristic example. Between January and March 1954 68 cases were tried by the people's court of the fourth region of the city of Hsian with the participation of people's assessors. Only one case was appealed.[29] A citizen of the Chinese People's Republic who is at least 23 years of age and has the right of voting and being elected can be a people's assessor. An exception is formed by those persons who have been deprived of political rights. Giving great significance to the system of people's assessors, the Law on the organization of the people's courts (Article 36) provides that the people's assessors are included within the composition of the judicial college during the fulfillment of their duty. They are equal to the judges, a fact which is a real guar-

antee of the judicial obligations carried out by them. Judicial practices in the courts of the CPR have established that lay assessors shall have the right to: A) demand from the judge an explanation of circumstances and content of a case; B) personally become acquainted with a case, verify all circumstances of a case, question the accused during court session, and decide questions which arise during the trial, together with the judge; C) participate in the reaching of a verdict and sign the decision of the court.

If any differences of opinion arise between judge and people's assessor in reaching a decision, the question is solved by a vote, whereby the minority must submit to the majority. If the voting brings no positive results, and there is no majority of votes, the judicial college appeals to the chairman of the judicial college or the chairman of the court for an interpretation or, finally, to the judicial committee, which furnishes a decision. Upon notification by the people's court and within an established time the people's assessors must appear in court to carry out their obligation. Practice has established that each people's assessor shall participate in court proceedings twice a year for periods of 10 days each. If during the course of the 10 days the case has not been concluded, the term of authority extended to the people's assessors shall be extended to the completion of court proceeding. The Ministry of Justice of the CPR recommended the following methods of electing people's assessors in instructions of 21 July 1956.[30]

The people's assessors of the local courts shall be elected directly by the population or by county, settlement, or regional assembly of people's representatives. The lay assessors of middle level courts and cities of central subordination shall be elected by the assemblies of people's representatives, and they can be nominated by corresponding institutions, public organizations, bench and office workers of enterprises. Lay assessors of the courts of the highest level are nominated by public organizations as well as by the bench and office workers of enterprises.

Concrete forms of participation by people's assessors in court did not appear right away. An analysis of the practice of drawing people's assessors toward carrying out these functions allows us to come to a conclusion that there are three forms observed in court operations. 1. Temporary invitation of people's assessors. This form has two variations: People's assessors are elected beforehand, but in the first case they are called without any schedule at

the discretion of the court; in the second case the assessors are elected and invited to the court without a schedule but in consideration of the profession or specialty of the assessor (for trying cases having a bearing on the specialty of the assessor). 2. Constant replacement of assessors. This consists in the lay assessors appearing in court for an established length of time (twice a year--10 days each), corresponding to the calendar drawn up by the court. 3. A combined form, including elements of the first two, that is, a constant replacement of assessors according to a schedule and temporary individual calls.

At present a third form is being used in the courts, the advantage of which consists of the following: 1) The people's assessors are acquainted with the court schedule, as a result of which they can schedule their time and appear on time at court to carry out their obligations; 2) Receiving a long period of time between court obligations, people's assessors can increase their legal knowledge, as well as become acquainted with laws and court procedures, a circumstance which will allow them to participate more effectively in trying cases; 3) The work of the court and the assessors is conducted in a more planned manner with a schedule set up ahead of time; 4) If a case comes up which demands special knowledge, the court can call up those people's assessors who possess such knowledge. This insures a higher quality of judicial operations.

A material guarantee of the participation of workers in the court as people's assessors is the remuneration of expenditures involved in carrying out this work. According to Article 37 of the Law on the organization of people's courts, wages are maintained for the people's assessors for the period during which they are carrying out these judicial functions. Those who do not receive wages receive corresponding compensation from the court. It has been established by practice that if an assessor lives at a great distance from the court, the court is obligated to reimburse him for his transportation.

In close connection with the principle of participation of people's assessors in carrying out justice, the right to challenge judges exists, which insures impartiality of the court and eliminates the possibility of arbitrary action in removing people's assessors and judges from the composition of the court. The Law on the organization of the people's courts makes no distinction between challenging judges and people's assessors (Article 13). If one side of the case considers that a judge is somehow less than impartial as to the outcome of the case, and because of this the trial could be unjust, it has the right

to demand the judge's removal. The question of removing a judge is decided by the chairman of the court. In addition, a petition for removal can be submitted to the procurator's office and the secretary of the court sitting.

Article 31 of the Law on the organization of people's courts establishes the principle for the election of the chairmen of people's courts of all levels and the appointment of vice-chairmen, the chairmen of the colleges and their Vice-chairmen as well as judges assistants. These positions can be occupied by any citizen of the CPR who has reached the age of 23 and who has the right to vote and hold office. On the basis of Article 27 of the Constitution and Article 32 of the Law on the organization of people's courts, the chairman of the People's Supreme Court of the CPR is elected by the All-Chinese Assembly of People's Representatives. The chairmen of local people's courts are elected by local assemblies of people's representatives.[31]

In respect to the chairmen of people's courts of the middle level, there is a rule according to which the chairman of such a people's court is elected by the assembly of people's representatives of a province or city of central subordination. In the national minority regions the chairmen of the people's courts are elected by the organs of self-government of a corresponding level. If the chairman of the court gives up his post for any reason between sessions of the corresponding assembly of people's representatives, the corresponding people's committees appoint one of his deputies to this position until the next session of the assembly of people's representatives, which either ratifies his appointment or elects a new chairman.[32] The chairmen who are elected are responsible to the corresponding assembly of people's representatives which can remove them from their post before the term of office is completed.[33]

On the basis of Article 31 of the Constitution and Article 32 of the Law on the organization of people's courts the deputy chairman of the People's Supreme Court, as well as the judges and members of the judicial college of the People's Supreme Court are appointed and removed by the Permanent Committee of the All-Chinese Assembly of People's Representatives. The deputy chairmen and the judges of the higher, middle and lower level courts are appointed and removed by the corresponding people's committees.[34] Judges' assistants of local people's courts are appointed and removed by higher organs of judicial administration. The judges' assistants of the People's Supreme Court are ap-

pointed and removed by the Ministry of Justice of the CPR. Judges' assistants, on the proposal of the chairman of the court which is accepted by the judicial committee, can temporarily fulfill the duties of judges.[35]

Proceeding from the general democratic situation, whereby all state organs must find their support in the masses, constantly maintaining close ties with the masses, listen to their opinion and be under their supervision, Article 80 of the Constitution and Article 14 of the Law on the organization of people's courts stipulate that the People's Supreme Court is responsible to the All-Chinese Assembly of People's Representatives and is answerable to it. And during the period between sessions of the All-Chinese Assembly of People's Representatives it is responsible to the permanent committee of the Assembly and answerable to it. Local people's courts are responsible to local assemblies of people's representatives of corresponding level and answerable to them.

In this manner control is established by the workers over the court activities. The practical application of this condition aids the courts much in their work. Court chairmen give reports before the assemblies of people's representatives and also present written reports. Tung Pi-wu, speaking at the Second Session of the All-Chinese Assembly of People's Representatives--first convocation[36]--gave an interesting example which characterized the functions of the assembly of people's representatives in controlling the activities of the court. Three sessions of assemblies of people's representatives of 10 districts of Peking reviewed and sharply criticized reports presented to them by people's courts. These sessions of district assemblies of people's representatives made 540 proposals on the operations of districts courts, which were later reduced to 385 proposals. Sixty-four of them note the positive side of court operations, 202 proposals criticized court operations, and 119 proposals indicate measures for improving operations. All of these proposals mobilized the functionaries of the people's court for conducting a campaign to improve work.

In his speech at the Third Session of the All-Chinese Assembly of People's Representatives--first convocation--Tung Pi-wu mentioned one more form of control by the broad masses over the activities of the Court. "A few years ago the people's courts of all levels began to handle letters from the public and receive visitors. This is an important facet of the policy of ties with the masses, which is conducted in our judicial work . In the struggle for the liquidation of counter-revolutionaries the masses actively aided the people's courts in verify-

ing evidence and voiced their opinions on several cases which had received unjust verdicts. All of this made it possible for the people's courts to operate on an even higher level and to avoid or decrease cases of miscarriage of justice."[37]

There were no people's assessors participating in the courts of the former China. The ruling classes of the former China did not allow the workers to run the state in any form. All cases in all courts were tried without the participation of people's assessors. In the past a system was used for replacing judges which made it absolutely impossible for the laboring classes, worker or peasant, to occupy a judicial position. Article 2 of the Law on the organization of judicial establishments in the Chinese Republic stipulated that in the local courts cases were tried by a single judge, and in the higher courts and in the Supreme Court--by three permanent judges. Local courts tried the majority of criminal cases, and the higher court and Supreme Court were basically appellate courts and handled an extremely limited number of cases in the capacity of court of the first instance.

In order to occupy the position of judge it was necessary to have a certain education and pass two special examinations (Article 40). In Chapter 6 of this Law of the Kuomintang, an extremely complicated system of filling judgeships was worked out according to classes of public officials. There were no elected judgeships. Judges of the first class, who were equal to the highest state functionaries, were appointed by the government according to a special system. Judges of the second class, also nominated by the government, were officials of the higher court of the Supreme Court. Judges of the third class--officials of local and higher courts--were appointed by the government at the representation of the chamber of justice.

A judge could not be removed from his position or discharged (Article 51). Upon reaching the age of 65 a judge could request retirement, but if he did not request this he could continue working. It is obvious that under such a system only representatives of the property classes could hold judgeships. The nation was basically illiterate and was subjected to terrible slavery at the hands of the national and foreign bourgeoisie.

3. Public Trials

The principle of public trials in the people's

courts of the new China was established in the legislative system long before the liberation of the entire country. As early as the period of the Second Civil Revolutionary war this principle was clearly established in the legislation of the Central Red Region. On 9 June 1932 the Central Executive Committee of the Red Region of China published temporary regulations on the organization of courts and judicial proceedings, in Article 16 of which it was stipulated: "Trials must be held publicly with the exception of cases whereby the dissemination of a state secret might take place, but the sentence or verdict must be made public."

After the founding of the Chinese People's Republic the principle of public trial was established in the regulations on the temporary organization of people's courts of the CPR which was published by the government in 1951, as well as in the various instructions of the People's Supreme Court of the CPR. In the subsequent Constitution of the CPR the principle of public trial was affirmed and the constitutional principle of "procedure" (Article 76). This principle is also reflected in Article 7 of the Law on the organization of people's courts. The Constitution stipulates that "the trial of cases in all people's courts shall take place publicly, with the exception of special cases provided for by law." Public trial means that the judicial action shall take place in the presence of outsiders, and that the organs of the press shall have the right to report on everything that takes place in the court, as well as the right to publish the sentences in individual cases.

The principle of public trial which was affirmed in the Constitution of the CPR is an expression of the true democratism of the state and social system of the new China. The broad masses of workers are drawn to the actual management of government and are drawn into the active political life of the country. The people's government of China, governed in its actions by the will of the people, incorporating this will into actuality, assures in every possible way the active participation of the workers in the life of the state. This is achieved in particular by supervision by the people over the activities of the open court and by the direct participation of the masses in the carrying out of justice. One of the presuppositions for the successful fulfillment of the great program of building socialist society in China is the education of the workers in the spirit of socialism, in the spirit of the combat for the final victory over the remnants of capitalism in the consciousness of individuals.

The principle of public trial furthers the solution of this important state task. The significance of the principle of public trial is many-faceted. Public judicial proceedings aid the people's democratic court in its task of educating the workers, getting to the truth and passing a correct and just sentence. Punishing criminals and exposing the reasons for individual criminal acts, the open trial aids in educating feelings of intolerance toward law-breakers. In addition, the public trial infuses in those present at the trial the consciousness of the inevitability of punishment for infraction of the law. Thus the principle of public trial assures a tie between the court and the people, with supervision by the people and the educative role of the court. In all of its activites the court educates the citizen in the spirit of love to Motherland and conscious observance of the laws. Proclaiming the principle of public trial the Constitution of the CPR stipulated that trials could be closed only in cases provided by law. In the development of this constitutional provision, the Permanent Committee of the All-Chinese Assembly of People's Representatives issued on 8 May 1956 a decree "on matters subject to closed court examination,"[38] which stated that closed trials could take place in matters dealing with a state secret, with the intimate life of the litigants and in cases of juvenille offenders under 18 years of age. However, the sentences in all criminal cases are always announced publicly.

These deviations from the principle of public trial as stipulated by law achieve the necessary meeting of the interest of state and individual, which is possible only in a state of the Socialist type, such as People's Democratic China. In Chinese criminal procedure public trial is not a formal principle, but a truly popular one, for it is not only proclaimed but is effected fully and consistently. The People's Democratic Court does not only not fear public supervision, but organizes it itself, taking the necessary measures for a trial to be as public as possible and to create favorable conditions for the workers to be present at the hearing.

The People's courts try various cases locally which are of great educational significance. The functionaries of the people's court often visit factories and plants for hearings on matters connected with industrial accidents, caused by infractions of labor discipline and rules of technical operations. They also visit state institutions for hearings on cases of corruption and moral decay of individual functionaries, and hear cases in

industrial and commercial regions on private commercial-industrial enterprises which are charged with evading state taxes. Hearings on the spot and assizes in Chinese criminal procedure are not identical in meaning. In conducting a hearing on the spot the court goes to the scene of the crime or the spot where the civil litigation originated, usually at an enterprise or in an institution, in order to handle the matter concretely. Assizes are the travelling of court functionaries to other localities for trying an unlimited scope of local criminal and civil cases. However, both of these forms of court activities bring the court into direct contact with the masses and insure a broad implementation of the principle of public trial.[39]

In order to assure the successful development of the movement for mutual aid and cooperation in agriculture, as well as the defense of the lawful interests of the people, the local people's courts have conducted 3795 circuit sessions.[40] At the present time the people's courts primarily try cases on the spot. There are almost no circuit sessions of people's courts now. In 50 county and city courts of the province of Kwangtung between January and May 1955, 2067 public court sessions were held, which were attended by more than 890,000 persons. In Nanking, during the course of ten months in 1955, 528 cases were tried publicly, the sentences of which were announced publicly. In trying these cases more than 62,700 persons were in attendance. In the city of Suchow during six months of 1955 24 major cases were tried publicly, and the sentences were also published broadly. In trying these cases about 10,000 persons were in attendance. In Hechiang county of Hopeh province more than 40,000 persons attended court sessions.[41]

In September 1954, after the Nanking City People's Court had announced a verdict on a case of brutal murder during the day, in the evening of the same day Lu Chin-Chung, a criminal in hiding, brought cartridges to a police station and helped expose a gang of thieves in the mobile detachment of the x-military section. During the course of September many criminals in the city voluntarily gave themselves up or returned stolen goods. In Shanghai about 29,000 counter-revolutionaries were exposed by the public.[42] After the public trial of a case of collective thievery in a marketing-supply cooperative, Yuhua, in Tafeng county in the winter of 1954, six employees voluntarily admitted their guilt in taking bribes and requested to be bound over for trial.[43]

In a multi-national state such as China, extreme

significance is acquired by the condition established by the Constitution, according to which the courts are obligated to publish sentences, decisions, announcements and other documents in local periodicals (Article 77). This publication strengthens the educational effect of the sentence and makes the court more accessible and comprehensible to the people, and, in addition, the principle of public trial is implemented more broadly. Almost all the newspapers of China periodically publish reports on trials taking place. These reports relate the essential facts of the trial, name the criminal and the method of punishment used by the court. For example, the newspaper Nanfang Jihpao on 23 June 1956 contained an article "public trial of counter-revolutionaries in Canton" in which the public trial which took place on 22 June 1956 in the Sun Yat-sen Memorial Hall and dealt with a group of counter-revolutionaries was handled in some detail.

City people's courts publish wall newspapers, print on rotary presses material dealing with the most characteristic trials, after which these are sent to social organizations of city, village and factory. The Tsekung city people's court once a week publishes a wall newspaper and hangs it at prominent spots throughout the city. One issue of the wall newspaper of this court, which is hanging at the entrance to the postoffice, is read by 2,000 to 3,000 persons each week. In two years the Tsekung court has published more than 70 of the most characteristic cases in its wall newspaper in order to educate the masses with concrete examples. In April 1955, during the campaign for combatting crime, more than 10 articles were published in the wall newspaper on trials of hooligans, thieves and other criminals. The articles went into detail on the crime and methods and the danger presented by criminals to national construction.[44]

It is interesting to note that during the period of the economic restoration of the country and several campaigns, the court conducted so-called judicial meetings ("Kungshen")--public court sessions with the participation of a large number of persons. Judicial meetings combined court trial with large-scale appearance of workers in confirmation of the indictment which had been handed down. The judicial meetings could be conducted under the condition that 1) they aid in the development of the mass movement and possess a particularly great educational significance for the masses; 2) sufficient proof is present and no doubt is aroused during the normal course of the trial; 3) the trial is carefully organized and prepared by the court.[45]

Judicial meetings played a particularly great role in the mass movement during the period of implementing the agrarian reform, when a campaign was conducted against malicious landowners who were exploiting the peasants mercilessly. Judicial meetings helped the peasants overcome the centuries-long feudal fear of the landowners. The indictments brought against the landowners by the peasants played a deciding role in the court verdicts. Judicial meetings aided in increasing the consciousness of the peasants, who acquired an assurance in their strength, and these meetings aided in explaining the agrarian policy of the people's government. During the course of the movement against the "three evils" judicial meetings were conducted at which cases of large-scale seizure of state and people's property were tried. At one of these meetings the case of the traitors Liu Ching-shang and Cheng Tse-shang met the broad approval and support of the workers of the entire country. The meeting took place on 10 February 1952 in the city of Paoting in Hopeh province. It was attended by 21,000 citizens. The trial was transmitted over the radio for the entire country. The court personnel was formed by the people's court of Hopeh province. The chairman of the committee for controlling economy was ratified by the acting chairman of the judicial meeting, and the indictment was read by the chairman of the committee for investigating this case. The victims appeared at the meeting to accuse Liu and Cheng of the crimes committed by them. After this the state prosecutor spoke and demanded the death pehalty, and this met the unanimous approval of all those present. The criminals were sentenced to death with confiscation of all their property.

This judicial meeting showed the workers that the party and government defend the interests of the people. It is evident from these examples that the holding of trials in the form of judicial meetings played a positive part in educating the workers during the period of implementing mass campaigns in the country. At present this form of judicial procedure is not used. However, even now a public proclamation of the sentence before a specially assembled audience is practiced outside the court at the place of residence, work or scene of the crime of the accused.

The Kuomintang law on the organization of judicial institutions of the Chinese Republic established extremely scanty rules on public trial. In Article 81 of this Law it was proclaimed that debate between the prosecution and

announcement of verdict must take place in open judicial session, with the exception of cases whereby the case deals with infractions of the social order and "morals." However, the question of open or closed sessions could be decided by the acting chairman, the decision of whom was implemented in the form of a court decision. But the Kuomintang legislature wanted even more. Article 86 gave the acting chairman the right to forbid access to the courtroom or removed from the courtroom all persons of whom there is reason to believe that they would disturb the proceedings. This decree eliminated the principle of public trial, since removal from the courtroom or prohibition from entering the courtroom of persons who, in the opinion of the chairman, would disrupt (but who had not yet disrupted) order in the court, in practice led to a prohibition against the masses attending court sessions, since they were always suspected by the reactionary Kuomintang officials. But in order to satisfy the idle curiosity of the representatives of the propertied classes of the Kuomintang in hearing "juicy" trials, Article 85 of the above Law permitted (in cases where the trial was held behind closed doors) the acting chairman to admit persons who, in his opinion, could remain in the courtroom. Thus the formal proclamation of public trial was actually not implemented, since its implementation depended completely on the arbitrary will of court functionaries, the hirelings of the ruling class.

The principle of verbal trial is closely connected with the principle of public trial. Verbal trial in the CPR is not stipulated by law, but proceeds from the very structure of the people's democratic process. The principle of verbality consists in a trial being held with the verbal testimony and explanation of all participants in the trial. Verbal discussion of all circumstances and evidence also takes place. The verbal form of court procedure furthers the more complete and all-sided explanation of all circumstances in the case. Without the principle of verbality the principle of public court procedure would be unthinkable. The principle of verbality assures the open nature of the judicial investigation and makes it possible to bring out immediately in sufficiently clear-cut formulations claims and petitions, guards against misunderstandings and assures lucidity and freshness of the courts perception. The verbal principle is of great significance for assuring the necessary rapidity of court action. The instructions of the People's Supreme Court stipulates that in their work the courts are

to hold strictly to the principle of verbal process. Documents, the contents of which are important for the formulation of the case, must be announced during the court session.

All written materials and conclusions presented by witnesses and experts not appearing in court are also announced during the court session. The stenographic accounts of questioning witnesses, undertaken by another court at the instructions of the court which is trying the case, also must be read. The entire court session is conducted verbally. The verbal principle has also been established for appeal court procedure. A verbal process naturally does not eliminate a written formulation of documents both at the preliminary hearing and during the trial. A stenographic account must be made of the entire trial.

Both the procurator and the court receive written material and documents, the content of which is significant for shedding light on the case. Findings of state and social institutions which are presented in court are also in written form, exactly the same as appeals, sentences and decisions of courts and other documents. A criminal case in the CPR conforms to no formal conditions as to content and form of appeals. People's reception points have been formed in the courts and procurator's offices, where each and every citizen may verbally lodge his petition or complaint, and it will be written down by the person in charge of the people's reception point. Appeals and petitions are also drawn up by attorneys at the instructions of citizens. This system provides much aid to the public and makes an appeal to the organs of the court and procurator's office easier.

Criminal procedural legislation of the old China attempted to liquidate the principle of verbal process, allowed judicial arbitrariness in respect to workers and deprived them of the possibility of speaking at trials in order to declare openly their dissatisfaction with the existing system. Article 116 of the Kuomintang criminal procedure code stipulated: "Witnesses subjected to proper questioning during an inquest or trial, if their testimony does not arouse suspicion (underlined by author), need not be called to the witness stand a second time . . ." This means that, having conducted an inquest prior to the trial, the judge is not obligated to call certain witnesses and question them personally during the trial if he considers the testimony of these witnesses gave no cause for doubt. Having accepted part of the testimony as not being subject to suspicion and thanks to this not demanding verification during the trial itself, the judge in

this manner would have already formed an opinion of the outcome of the trial and eliminate the entire significance connected with questioning witnesses during the trial and the personal hearing of testimony, that is, the judge would have been already convinced of the guilt or innocence of the accused and therefore the trial itself was merely a formality.

It is perfectly true that the judge, in deciding a question on the reliability of testimony, was guided by his membership in the exploiter class and his reactionary, bourgeois conception of law. This was directed at keeping all testimony and opinions from the court which were unfavorable to the ruling classes. It is perfectly understandable that such an attitude toward the principle of verbal process did nothing to further the establishment of objective proof in a case, toward which, particularly in the political trials of revolutionaries, the former Chinese judges did not strive.

4. The Right of the Accused to Defend Himself

Article 76 of the Constitution of the CPR establishes the right of the accused to defend himself. Raising to a constitutional principle the right of the accused to defend himself and the establishment of actual guarantees of the implementation of this right testified to the genuine democratism of criminal procedure in the new China, since an important task of criminal justice is a securing of the political, labor and other personal and property rights and lawful interests of citizens. The right of the accused to defense means the possibility of refuting the accusation during the course of the trial, and to defend one's rights and lawful interests, both personally and with the aid of a defense attorney, and this right places the obligation on the court, procurator and investigator to insure the rights of the accused for the purpose of a just outcome, a legal and just verdict, and the attainment of other goals standing before justice.

Proclaiming the right of the accused for defense, the Constitution actually assures this right. Article 7 of the Law on the organization of People's courts provides that the accused, besides the right of personal defense, may turn over his defense to an attorney or citizens recommended by public organizations or accepted by the court. He can be defended by both relatives and guardians. If the Court recognizes the necessity, it can name the defender. The right of defense

in people's China is a right provided by the state to the accused. The accused and his defender have the right to refute the indictment on the basis of fact and the law, and to prove the innocence of the accused or the presence of extenuating circumstances. In the practice of people's justice the right of the accused for defense was proclaimed from the first days of the revolutionary struggles of the people. This is expressed in the fact that the accused was permitted not only to conduct his own defense but to have a defense attorney. The temporary regulations on the organization of courts and court procedures, which was published by the Central Executive Committee of the Red Regions of China on 9 June 1932 stipulated: "The accused may send a representative to participate in the trial to defend his interests . . ." In Article 6 of the regulations on the organization of people's tribunal for the period of the land reform, it was established that "during court trial county (city) people's tribunals and their branches must guarantee the rights of the accused to personal defense and the right to call defense attorneys." The right of the accused for defense in Chinese court procedure is proclaimed and assured because the CPR is a country of the people's democracy, where the interests of the state and the people are the same. Here there can be no facts whereby a death penalty was carried out without basis, or whereby an innocent person was judged guilty, for otherwise not only certain citizens suffer a loss, but also the Party and the state, the authority of which would be undermined in the eyes of the people. Therefore, on the one hand, the state strives for the functionaries of investigative organs, organs of the procurator's office and national security to collect reliable and objective evidence in order to combat crimes effectively. On the other hand, the state gives the accused the right to defend himself so that the accused might express his opinion, refute a false accusation, for if only the opinion of the prosecutor is heard and not that of the defendant, it would be easy to make a mistake and carry out a subjective, one-sided sentence.

In his work "On the Correct Solution of Contradictions Within the People" Mao Tse-tung stressed the necessity of reviewing a question from all sides and indicated that in a one-sided perusal it is impossible to find a means of solving contradictions and dealing successfully with the tasks at hand. It is evident that a problem can be solved correctly only if it is viewed from all sides. If we were to speak concretely

on criminal procedure, only on the basis of a broad collection of evidence, only upon hearing the opinions of both sides and the witnesses, is it possible to judge whether facts are genuine. The correctness of these principles has been affirmed long ago by procedural practice. The Chungking city people's court tried the case of capitalist Hu, who, in fulfilling state orders for processing raw materials, gave false information, raised costs and in this manner amassed more than 90,000,000 yuan (old currency).

During the trial the chairman of the court considered that Hu had committed these serious crimes after the movement against the "five evils," and therefore intended to sentence Hu to five years of imprisonment in corrective labor camps. But the attorney for the defense brought out that Hu had always met his deadlines, in correspondence to established qualitative norms, had admitted his guilt, had returned in full the money amassed by him and after this had actively directed production. When all these facts were brought out and evidence had been presented by the attorney for the defense, the chairman of the court changed his decision and Hu was sentenced to two years of corrective labor.[46] Presenting the accused the possibility of making use of a defender is approved by the masses and verdicts handed down in cases where a defender has participated are supported by the people. Defendant Ching Chung, a Hueyu by nationality, was charged with inflicting bodily harm on his wife. He was ill with a serious form of paralysis--he could not speak. On these grounds his relations with his wife deteriorated, and she wanted to leave him. Ching Chung attempted to kill her, striking her with a knife, but he only wounded her. The citizens who were present at the trial approved of the decision of the court, asserting that "although the accused could not speak himself, the court turned over his case to a defender of the same nationality--this is a good method of handling a case."[47]

The right of the accused to defend himself in a criminal trial in the CPR is implemented primarily by the accused himself.[48] The accused in a criminal trial is a fully endowed subject of procedural rights from the first moment he appears at court, and not only during the trial stage. Naturally the scope of procedural rights of the accused differ in various stages of the criminal process. At the preliminary inquest the accused has the right to acquaint himself with the indictment, for the person conducting the investigation is obligated to acquaint the accused with the crime in which he is implicated, with the basic facts which have been collected,

the evidence and bases on which he has been charged. In addition, the accused has the right to challenge witnesses, demand the appointment of experts and present evidence. He can demand confrontation. He has the right to participate in an examination by experts. He can object to improper procedures by the investigation, and upon completion of investigation he has the right to acquaint himself with the materials at hand and demand supplementary investigation, as well as to present other petitions. But at this stage the accused does not have the right to make use of the services of a defender.

Assuring the accused of such a broad scope of rights during the stage of preliminary investigation guarantees the maintenance of the accused's rights for defense, comprehensiveness and objectivity of the investigation. During the trial stage the accused is one of the two sides and possesses extensive rights. Although at present there is no law in the CPR determining the rights of the accused during trial, judicial practice has established precedents by which the conclusion can be made that the accused possesses the following rights at this stage: to participate actively in the trial proceedings; to petition the withdrawal of judges, procurator, secretary, expert and interpreter; to present evidence to the court and participate in the verification of evidence; to give explanations and make petitions; to participate in debates between the two sides and give a concluding summary. He also has the right to appeal the decision or verdict of the court.

Besides the above-mentioned rights, during the trial stage the accused has the right to use the services of a defense attorney.[49] This is extremely important for assuring all rights and guarding the lawful interests of the accused.

The particular humaneness of criminal procedure in the CPR is shown in the fact that the court can appoint a defender for the accused at its own discretion, when it finds this necessary, and particularly in cases where there is some doubt as to the ability of the accused to defend himself independently. The participation of a defense attorney in a trial is obligatory in cases: 1) where the procurator acts as the state prosecutor. However, the accused may refuse a defense attorney, but this refusal must be expressed clearly and reflected in the stenographic record of the court session. The refusal of the defendant for defense does not hinder the procurator in bringing forth the indictment. 2) When the accused possess physical handicaps which hinder them in

carrying out their lawful rights (for example, if the accused is blind or deaf); 3) of minor defendants; 4) where there are several defendants, one of whom has a defense attorney; 5) of crimes for which the law provides the death penalty or life impri sonment. The following example testifies to the concrete assurance of the rights of the accused for defense in criminal procedure in the CPR. A special railroad court in Peking, trying a case of theft of state funds, turned down the petition of the accused to obtain a defense attorney, although the procurator was participating in the case. The verdict was nullified in this case by a higher court on the appeal of the defendant, and the case was re-tried with the participation of a defense attorney.[50] The head of the judicial college appoints a defense attorney for the accused for participation in the trial and for appeal purposes, if the accused does not have sufficient funds to pay for the services of a defense attorney. The appointment of a defense attorney without right to remuneration is effected in cases whereby the accused is obligated to have a defense attorney and proves that he does not have sufficient funds to pay for the services of an attorney, and if defense is not obligatory, but the accused demands a defense attorney. Other persons besides an attorney may defend the accused: citizens recommended by popular organizations or admitted by the court, as well as close relatives or guardians of the accused.[51] Persons deprived of political rights do not possess the right of appearing as a defender during the period of the deprival of those rights. However, persons who are deprived of political rights can defend the accused if the latter is his close relative or guardian.[52]

The defense attorney possesses broad rights and is equal from a procedural point of view to the representative of the prosecution. He has the right to talk with the accused before the trial and to become acquainted with all materials pertaining to the case. He can also petition to question the accused, witnesses and experts, and he can initiate a petition for the acceptance of new evidence and the calling of new witnesses. With the permission of the chairman of the court he can question witnesses, experts and both sides in the case. The defense attorney participates in the debates, during which he always speaks after the procurator. With the consent of the accused defense attorney can appeal the decision or sentence of the court and participate in the trial of the case in a court of the second instance. The defense attorney is basically free in his procedural ac-

tivities and is almost completely free from the will of the accused. He aids the accused with his legal knowledge. The court does not have the right and cannot limit the defense attorney in correctly carrying out his obligations.

Besides broad procedural rights, the defense attorney has the obligation of conforming strictly to the rules of legal procedure, to defend the interests of the state and to apply himself conscientiously to the matter at hand. With a feeling of great political responsibility, the defense attorney should present evidence, not twisting facts and laws, and he should not commit any unlawful acts with the purpose of freeing the defendant from responsibility in an unfair manner. The defense attorney does not have the right to act counter to the interests of the defendant nor to participate in the trial as a witness. The All-Chinese Assembly of Attorneys, which took place in Peking in July 1957, noted that the number of lawyers' offices was increasing in the country, and that legal work was developing greatly. At present legal consultation points have been formed in all large and medium-sized cities, as well as in counties and cities in rural areas where people's courts are located. The number of legal consultation offices has increased from 50 to 817, and the number of attorneys has increased by more than eight times and amounts to more than 2500.[53]

The anti-popular reactionary nature of the feudal-bourgeois court system was expressed in the position of the accused in former Chinese criminal procedure, for the accused was without rights. What rights the accused did have for defense were certainly minimal in a state where the law provided for the formation of extraordinary courts, in which trials took place behind closed doors and the accused did not even know of what he was accused. This was a state where the law allowed the defense attorney to be removed from the court-room and where he could be punished for giving speeches which were "illicit" and objectionable to the court. The defense attorney could speak only when his speech answered the demands of "legality." "A barrister" (Article 89 of the Law on the organization of legal institutions of the Chinese Republic state), "appearing before the court as a representative of one of the sides of the case or as attorney for the defense, if he includes in his statements inadmissible expressions, the chairman of the court may make a ruling or he may be deprived of the right of representation in this case. The above regulations apply also to private attorneys who appear as representatives or defenders."

The barrister could be fined, arrested for a term of up to five days and put under guard until the end of the trial. In addition, he also bore administrative responsibility.[54] Articles 15 and 16 of the rules on barristers gave the right to the attorney for the defense not to accept instructions from the court on defending the accused. In addition, the defense attorney could refuse to continue the defense at any stage of the trial, whereby the law states hypocritically that in such a case the defense attorney shall be required to make up for losses sustained by the accused.

It is hardly necessary to comment on these "legal" provisions. They actually reduced to nothing the possibility of the representatives of the people to make use of the services of defense attorneys. We should also add that in old China there was no law which limited the "activities" of the procurator in supporting the indictment. The procurator was free to say things which were "allowable" and "unallowable," "permissible" and "impermissible."

5. National Language in Legal Procedure

China is a multi-national state. Besides Chinese (Han) which comprise 94% of the population, the country includes more than 60 other nationalities with a total number of more than 35.5 million persons. The national minorities are spread over a large territory, occupying about 65% of the entire territory of the country.[55] Before the founding of the CPR the Chinese nationalities experienced an unbearable national oppression. The reactionary rulers of China trampled on the rights of minority peoples, destroyed their culture, blocked economic development and played up national differences. The exploitation of the working masses of the national minorities by local feudal lords was increased as a result of plundering on the part of government officials and Chinese merchants. The Kuomintang great power chauvinists conducted a policy of national oppression and discrimination, concealing the existence of national minorities within the state, considering them branches of the Chinese nation or persons with nothing more than a peculiar way of life and customs. This reactionary policy could not change the facts, and it only heightened national enmity and estrangement.

This reactionary chauvinistic policy was reflected in the court structure and criminal procedure in old China. In Article 74 of the Kuomintang law on the organization of the court it was stipulated that only Chinese

was to be used in court-room procedure. The Law on the organization of judicial institutions of the Chinese Republic provided in Chapter 11, which was entitled "Official Language" (Article 93) that "during a court-room session Chinese shall be the official language." The people's government, from the first days of its coming to power, changed this situation drastically, establishing in liberated areas equality between all nations and giving the right to use one's native language in court. Equality of rights for the nations of China and the right to make use of one's native language in court were stipulated by Article 4 and 14 of the Constitutional Program of the Red Regions of China (1934), in Article 20 of the Political Program of the Shansi-Chahar-Hopeh border region (1940), in Article 17 of the Political Program of the Shensi-Kansu-Ningsia border region (1941), in the Constitution of the Shensi-Kansu-Ningsia border Region (1946) and in other acts.

The spreading of the people's democratic system throughout the territory of China basically changed the policy in respect to national cultures of previously oppressed nations, not being situated on the territory of the liberated regions prior to 1949. The CPC and the people's government are going all out to aid the backward peoples in creating their own national economy and culture. An important measure for solving the nationalities problem in the CPR was the presentation of administrative-territorial autonomy to the national minorities in the areas of their compact distribution.[56] In the development of the principle of equality of nations, the regulations on the temporary organization of the people's courts in the CPR in 1951 and the resolution of the State Administrative Council of 1952 (on insuring equality of nationality for all separate nationalities), clearly stipulated that citizens of all nationalities have the right to use their own native language and system of writing in court.[57] The change in the political and economic situation of the national minorities is accompanied by a constant rise in their cultural level. The scientific institutions of China are aiding in forming national writing systems for those nationalities which previously did not possess them. A system of schools is being formed in the national regions, in which teaching is conducted in the native language of the region. In order to train national leading cadres, in Peking and several other cities institutes of national minorities have been opened, where there are political-legal departments. In addition, cadres for the national minor-

ity regions are being trained by the political-legal schools in the country, where special groups of national minorities are being formed (for example, the "Central School of Political-Legal Cadres").

In his report on the draft constitution of the CPR Liu Shao-chiclearly formulated the right of the national minorities to use their national language in government activities: "The organs of self-government, in carrying out their functions, should use the language and system of writing which is common among the nationalities of the given region."[58] The principle of national language in court procedure is firmly bound in the constitution, which provides equal rights for all nations within China: "All nationalities in our country have joined in one great family of free and equal peoples. . . during the course of economic and cultural construction the state shall care for the needs of all the nationalities, and in questions of socialist reformation it will fully consider the peculiarities of their development." Article 3 of the Constitution stipulates that "the CPR is a single, unified multi-national state. All nationalities enjoy equal rights . . . all nationalities enjoy freedom of the use and development of their own language and system of writing, the freedom of maintaining and changing their customs and mores . . ." The right of the organs of self-government in autonomous regions, autonomous districts and autonomous counties to use the national language and system of writing is stipulated in Article 71 of the Constitution. The principle of national language in legal procedure is directly expressed in Article 77 of the Constitution: "The citizens of all nationalities have the right to use their native language and system of writing in a court of law. For litigants who do not know the language and system of writing common in the given area, the people's court must arrange for translation. In regions where the national minorities live in a compact group, or in regions where many nationalities live, the people's courts are required to conduct court sessions in the language common to the given region and publish sentences, decisions, announcements and other documents, using the written language of the given locality."

This article fully exhausts all possible cases of applying the principle of national language in court, taking into consideration the spread-out distribution of the population throughout the territory of China. In areas where there is a compact group of any nationality, organs of self-government are formed for autonomous regions,

autonomous districts and autonomous counties, as well as people's courts with judges chosen from the local nationality. The Law of the organization of people's courts stipulates in Chapter 2--"The organization of people's courts and their functions"--that people's courts of autonomous counties are to be formed (Paragraph 2, Line 15), as well as middle level courts in autonomous regions (Paragraph 1, Line 20) and Higher people's courts of the autonomous regions (Paragraph 2, Line 23). In particular, these courts have been set up in the Sinkiang-Uigur autonomous region and other areas of the country. Sessions in these courts are conducted in the language of the given nationality. Many functionaries of the basic nationality are presently working in the people's courts of the autonomous regions.[59]

For persons not having a command of the language which is being used to conduct the court session, the organs of investigation and the courts supply translation and verbal testimony through an interpreter. The obligation to provide translated materials and an interpreter falls upon the investigator who is conducting the investigation and on the chairman of the court which is trying the case. Violation of the principle of national language in court causes a sentence to be rescinded. From the above it is possible to form a conclusion that the use of the national language in court and the right of the defendant to speak in his native language and make use of the aid of an interpreter comprises the necessary guarantee for correct investigation and handling of cases and, in addition, serves the function of fulfilling the educational tasks of the court.[60] The introduction of the use of the national language in court was one of the manifestations of the Leninist national policy conducted in China by the Communist Party and the government. As the peoples of the Soviet Union, the workers of China, upon coming to power, gave each nationality in the country the right to develop freely its own culture, including the use of its native language.

6. Independence of the Court in Trying a Case and Its Subordination to the Law Alone. The Collegiate Principle. The Question of Directness in Chinese Criminal Procedure

Article 78 of the Constitution of the CPR proclaims: "The people's courts are independent in trying cases and are subordinate only to law." Article 9 of the Law on the organization of people's courts stipulates the collegiate principle: "Cases in people's courts are

tried by a judicial college." These two principles are firmly joined with one another and present one unified whole in judicial operations. The principle of the independence of the court in trying a case and its subordination to law alone is one of the state-legal bases of the organization and activities of the people's court, expressing its democratism, causing a steadfast observance of socialist legality in court operations and the implementation by the court of the policy of the Party and people's democratic authority, expressed in law.

However, this principle was not proclaimed immediately by the Chinese government, which is explained by several reasons. The main reason was the lack of training of court functionaries cadres, the lack of systematized legislation and the complexity of the political situation during the period of the revolution. During the period of carrying out the revolution, before the ratification of the Constitution, the people's courts formed part of corresponding local people's government, were subordinate to them and higher courts, which controlled and directed the activities of the courts. After the liberation of the country the Regulations on the Temporary Organization of People's Courts of 1951 (Article 10) in the legislative system stipulated that the courts of all levels were component parts of the people's government of the same level, which would direct their operations and exercise leadership over them. After the publication of the Constitution and the Law on the organization of people's courts the subordination of the courts to local organs of authority was abolished.[61] However, obviously the independence of the court in trying concrete cases did not signify its independence from state policy. Court operations are closely joined with political and economic tasks standing before the state. In trying a case the court is subordinate to the law, is subordinate to the will of the people and is placed under the control of the people. Its activities are controlled by the procurator's office and the higher people's court.[62]

The CPC is the leading and directive force of society. Carrying out political leadership, the Party directs the activities of all state and social organizations, which is due to the endless confidence on the part of the workers and the tremendous authority enjoyed by the Party among the masses. In agreement with the principle of Party leadership of state organs the Party conducts its policy through the organs of the court. The direction of judicial activities carried out by the Party is in strict compliance with the principle of inde-

pendence of the court and subordination of the court to law alone.

The selection and training of cadres for judicial functionaries by Party organs is closely connected with clarification of work of the courts and control over the actions of judges. The successful implementation by the court of the tasks of socialist justice is also contributed to by the close connection between the courts and the people's assemblies and people's committees, which are the direct and most democratic organizations of the masses themselves, insuring them a maximum participation in government. The people's assemblies and local people's governments should know whether the courts are justifying the confidence of the people and whether in judging cases they observe the laws which express the will of the masses.

In carrying out socialist justice, the court is supported by other organs, including the organs of the procurator's office, as well as organs of investigation. The methods used by these organs are in compliance with the principle of independence of the court and subordination of the court only to law. According to Article 81 of the Constitution and Article 3 of the Law on the organization of the people's procurator's office, the People's Supreme Procurator-General's Office has the function of supervising the exact fulfillment of the laws by all organs subordinate to the State Council, as well as the local state organs, functionaries of the government structure and citizens. The task given to the procurator's office to supervise the exact and uniform execution of the laws of the country was carried out by general supervision, judicial supervision, supervision over organs of investigation, etc.[63] The activities of the procurator's office concerning judicial supervision have as their purpose the maintenance of strict observance of the laws in trying individual cases and passing judgment. All relations between the procurator's office and the court, in relation to its activities in carrying out justice, take place only within the procedural system. The procedural system, stipulated by law, assures a high degree of effectiveness of the work of the procurator's office in judicial supervision, while constantly observing the independence of the courts and their subordination only to law.

The organs of judicial management, without interferring in the carrying out of justice, maintain by administrative-organizational means the necessary conditions for the correct trial and verdict in criminal and

civil cases, on the basis of a strict observance of the law. Judicial supervision, which exerts an influence on the outcome of individual cases, is carried out as a judicial operation, which assures the independence of the courts and their subordination only to law. The sentence review system as established in the CPR assures a high degree of effectiveness of control and direction of the courts of the first instance by the higher courts. According to the Constitution the system of democratic centralism is maintained in all state organs of the CPR, including the courts. The introduction of this system in the courts is explained by the fact that the courts are organs guarding the interests of the state and the people. In order to insure the accurate and correct outcome of cases and the establishment of objective truth in sentences and decisions, it is necessary to conduct a collective discussion and solution of the most important questions, based on the opinion of the majority. The collegiate principle in the people's court is expressed both in a collegiate examination of cases and in the activities of judicial committees, which have been formed in all people's courts of the various levels.[64]

The collegiate examination of cases means their trial before a judicial college in a court of the first instance, which is composed of a judge and two people's assessors, and in a court of the second instance--three judges. All the members of the judicial college enjoy equal rights, and all decisions of the college are based on majority vote. The leadership of the college in trying cases is carried out by the chairman of the court and chairman of the college.[65] Since the courts of the CPR incorporate the principle of independence of the court and subordination only to law, the direction of the judicial colleges by the chairman of the court and the chairman of the college consists in the following: The chairman of the court and the chairman of the college, after discussing a question in judicial committee, decide what matters should be handled independently by the judicial college, which of them should be presented for the approval of the chairman of the court, and which for the approval of the chairman of the college, and, finally, what matters should be discussed and decided in judicial committee.

As for cases tried by the judicial college, the chairman of the court and chairman of the judicial college should exercise control over the decision. If any doubt should arise among the members of the court trying the case, an appeal should be made to the chairman of the

court or the chairman of the college to give instructions.

If the opinion of the court and the chairman of the college do not coincide in any way, the chairman of the court gives instructions for coming to a solution. If there is a difference of opinion between the college and the chairman of the court, the matter is transferred to the judicial committee for examination and solution. The chairman of the court and the chairman of the judicial college can be acting chairmen of the colleges in trying cases.[66] In this case the decision is also arrived at by a majority vote. However, if there is no unanimity in coming to a decision and there is a difference of opinion between the judges and the chairman of the court or the chairman of the college as acting chairman, the case is transmitted for examination by the judicial committee. The scope of authorities possessed by the chairman of the court in directing the trial and decision of the case by judicial colleges, extends also to matters dealing with sentences and decisions which have come into legal force. The chairman of the court, having discovered that a mistake has been made of an actual or legal nature in the decision or sentence which has come into force, sends this case to the judicial committee to be reviewed in the framework of judicial supervision. The committee held the right to pass a new decision or sentence.[67]

We should mention that a case is reviewed in judicial committees after the case is tried before the college, but before the sentence is carried out. The law stipulates (Article 10 of the Law on the organization of people's courts) that in the session of the judicial committee members of the committee participate as well as the procurator, who has a consultative voice. However, in practice judges may be present at sessions of the judicial committee, who are not members of the committee, as well as heads of legal organs of the given administrative regions. After the case is discussed and a decision is handed down by the committee, the judicial college announces the sentence or verdict. The activities of the judicial committee form a system of collegiate leadership within the people's court in solving important questions which have a bearing on the judicial work. The Law on the organization of the people's court (Article 10) provides that the generalization of judicial practice is a task of the judicial committee, as well as a discussion of important and complex matters and other questions having a bearing upon the work of the court. The judicial committee consists of a chairman of the court, the deputy

chairman, the chairmen of the judicial colleges and several judges. The system of collegiate leadership in court functions and the institutions of judicial committees in the courts are justified by the entire course of development of courts in the CPR. At present the tasks before the people's courts are becoming more and more responsible and complex, and therefore the principle of collegiate leadership does not only not lose its topicality but acquires more and more significance. In compliance with Article 10 of the Law on the organization of people's courts, the chairman of the court is the chairman of the judicial committee. Questions at the committee session are resolved according to the principle of the submission of the minority to the majority. The chairman may not personally resolve a question in the judicial committee. The principle of collegiate leadership aids the courts in avoiding errors in deciding cases, raising the quality of court functions, aids in achieving a full study of cases and increases the knowledge and experience of the judges.

The principle of the independence of the court in trying cases and its subordination only to law, as well as the collegiate principle, furnishes a basis to assert that these two principles are interconnected and cannot exist separately. The nature of the principle of directness consists in the fact that the court, in passing sentence, must receive the direct transmission of all information and personally become acquainted with all evidence. It is perfectly clear that only in such a case is it possible to correctly investigate the entire matter and establish objective truth, whereby the court itself would be directly informed of the facts. A rule has been established in criminal procedure according to which the court can form its verdict only on the basis of that evidence which was introduced during the trial.

The judges personally hear the witnesses, defendants, experts and other persons and do not only acquaint themselves with their testimony, which had been given at the preliminary hearing; the court also personally inspects material evidence which has been introduced in the case and makes public written documents and statements pertaining to the case. In cases where the defendant, witness, or expert is absent, and the appearance of whom, by the decision of the court, is recognized as not obligatory, the stenographic record of the questioning of these persons at the preliminary inquest can be read aloud. From this it follows that materials from the preliminary hearings can be used as the basis of

a sentence, but only in such a case where such materials have been verified by the court during a judicial investigation.

In order to maintain the principle of directness there is provision to call all persons, the personal participation of whom is considered to be essential in the court session. The principle of directness in Chinese criminal procedure has unique forms. In cases where the judicial college, in trying a case, transfers it to the judicial committee for examination, a decision is passed by the committee with the participation of the judges trying the case. But the direct communication of all circumstances pertaining to the case would be effected by the judges, who also participate in forming the decision of the committee. Thus this exception does not eliminate the principle of directness, does not lower the quality of judicial examination and decision, and under concrete conditions and circumstances increases the quality of the examination of a case.

7. One Form of Equal Justice for All Citizens. Equality of Citizens Before the Law

In the CPR justice is carried out on the basis of a single form of equal justice for all citizens. All citizens are equal before the law, independent of their national or race affiliation, sex, possession, social origin, religion, education, economic position and mode of life.[68] This principle proceeds from the very nature of the people's democratic state, expresses socialist democratism and proletarian internationalism of legislation. In a people's democratic state there is no place for any type of discrimination against any citizens. The CPR, being a state of the Socialist type, has established not only formal but actual equality of all citizens, has not only proclaimed, but has assured an equal opportunity for all citizens to make use of the rights established by the Constitution. "All citizens of the CPR are equal before the law," Article 85 of the Constitution proclaims. The Law on the organization of people's courts of the CPR establishes the equality of all citizens in trying cases before the people's courts.

Any type of direct or indirect limitation of rights, or, on the other hand, the establishment of direct or indirect advantages to citizens depending on their race or nationality or depending on their economic or social position, religion, etc., is forbidden in the people's democratic state and is prosecuted by law. The

equality of rights of the citizens of the CPR means also their equal responsibility before the state, society and the court for infractions, misdemeanors and crimes. Persons breaking the law, independent of their position and merits, must bear the responsibility. "In our country the rights and obligations of the people coincide perfectly. No one can have only responsibilities and not enjoy rights, the same as nobody can enjoy rights without bearing any obligations . . . anybody who tries to deviate from these obligations cannot but meet censure from society."[69]

Any form of discrimination of individual citizens or groups of citizens is alien to people's democratic justice. During the first days of the existence of the Republic the suppression of counter-revolutionaries was conducted chiefly with the aid of military tribunals, which were formed in the local military control committees. During the agrarian reform a considerable proportion of the cases bearing on the carrying out of this reform were tried by temporarily formed people's tribunals, while general criminal and civil cases were tried by people's courts.

When the most important social democratic reformations were completed, it became possible and essential to carry out justice exclusively by means of people's courts. With the aim of the further strengthening of revolutionary legality the principle of a unified judicial system was established. The Constitution and the Law on the organization of the people's courts provide that justice shall be carried out by local people's courts, special courts and the People's Supreme Court. Local people's courts are divided into the lowest level people's courts, middle level courts and higher courts. Military courts are included in the special courts. Waterways and railroad transport courts, also included in this group, were abolished in June 1957, and cases within their jurisdiction were transferred to the general courts.

The unified nature of the judicial system consists in the following: In the centralized leadership of the country's courts, both local and special, by the People's Supreme Court;[70] in the unity and obligatory nature of the criminal and civil laws applied by all courts; in the unity of procedural forms used by all forms; in the unity and equality of justice for all citizens; in the unity of the tasks of justice, established by Article 3 of the Law on the organization of people's courts. "The task of the people's courts," this Article states, "is the trial of criminal and civil affairs, the punishment of criminal elements within the framework of the judicial system and

the solution of civil litigation, having as their aim the defense of the people's democratic system, support of public order, security of public property, the lawful rights and interests of citizens, the assurance of the successful conduction of socialist construction and socialist reformations in the country. In all of its activities the court educates the citizens in a spirit of love toward Motherland and conscious observance of the laws."

We should mention that after the consolidation of the above principle of the Constitution, certain judicial functionaries in China spoke out against it. In particular, opinions were expressed to the effect that equality of all citizens before the law negates the class sense and class nature of the laws, that this principle was proclaimed in bourgeois legislation and automatically transferred into the legislation of the CPR; but the principle of equality of citizens before the law could be applied only in respect to persons from the laboring classes and could not be applied to the representatives of the overthrown classes; that the principle of one equal justice for all citizens and equality for all citizens before the law eliminates the class nature of justice; that the law is not applied equally in respect to all nationalities, etc.

Appearing in the magazine Chengfa Yenchiu, Li Men and Chu Yun[71] objected to criticism, incorrect views and incorrect concepts of this principle and demonstrated the lack of foundation of all viewpoints expressed, using work by the court for examples. As a result of the ideological work conducted, as well as a result of the actual implementation of equality of citizens before the law and the principle of equal justice for all citizens, individual points of view were completely liquidated, and some were illuminated in such detail that the persons who had voiced these opinions became convinced of the error in their views.

Old China presented another picture, where the principle was not applied at all, and where various types of extraordinary courts existed, which were formed for quick action against revolutionary and progressive elements. As a rule, judicial procedure became simpler, the cases were tried behind closed doors, the accused were deprived of the right not only of using the services of a defense attorney, but of defending themselves, learning of the nature of the indictment, giving testimony, etc. A good example of the institution of extraordinary courts for actual extra-judicial action against

revolutionaries is the Law on emergency punishment for crimes directed against the Republic, published on 31 January 1920. Article 7 of this Law provided for the organization of temporary courts under the chairmanship of the chief official of the count y; in areas where military operations were going on, the military command of the area had the right to decide cases without a court. This meant that they had the right to deal directly against all revolutionaries, and this right was incorporated in the law. The measures of punishment according to this law were primarily the death penalty and life imprisonment. Rules on the promulgation of the Law on emergency punishment for crimes directed against the Republic were published on 9 March 1920, and also gave the right to the administrative authorities to imprison without a trial persons suspected of committing crimes. Before the liberation of China, as in many other countries, national discrimination was conducted: an insignificantly small ruling clique possessed all the rights and the entire nation of six hundred million persons had no rights at all. Neither the laws nor the courts defended the rights and interests of the people.

8. Objectivity and Comprehensiveness in Collecting, Verifying and Evaluating Evidence

The task of the people's democratic court is the arrival at a lawful and just sentence for each concrete case. The entire system of procedural forms in the criminal process in the CPR assures the fulfillment by the court of the task of arriving at objective truth. Governed by Marxist-Leninist teachings on the possibility of arriving at objective truths, making use of Marxist-Leninist methodology in studying the phenomena of nature and society, the people's democratic court strives to establish the true significance of all facts and circumstances. However, knowledge of the actual facts and circumstances, determination of their true significance, establishment of objective truth in a concrete case and carrying out a just sentence are to be achieved only with an objective investigation of circumstances bearing on the case, an investigation which is free from any prejudices or arbitrary conclusions. The establishment of objective truth in the sentence pre-supposes an objective and comprehensive investigation, and objective and comprehensive verification and evaluation of all evidence bearing on the case.

In the aim of a correct exposure of the crime, it is necessary during the course of investigation and trial

to collect evidence objectively and comprehensively. The "mass line" methods in the work conducted in investigation and study, as well as the search for truth in concrete actuality, are conditions for the implementation for the demands for objectivity and comprehensiveness in criminal procedure. The nature of the procedure of investigation and trial of a criminal case consists in the "mass line" methods being consolidated in investigation and judicial organs by means of a definite system, which is maintained in state development. The procedural system contains facilities not only for the investigation and studies to be conducted among the masses, but indicates what special problems must be cleared up and with the aid of which specially indicated persons. For example, the people's procurator's office does work in verification before the initiation of a criminal case, basing itself chiefly on cooperation from corresponding institutions, social organizations and the masses; during the course of investigation it is necessary to make broad use of interrogation of witnesses, who are familiar with the circumstances of the case and with information on the accused; if any technical questions arise, it is necessary to request a specialist to make an examination; in examining a body we use forensic medical workers; in inspecting the scene of the crime it is necessary to take the initiative and enlist the aid of eye-witnesses. These arrangements not only completely incorporated the implementation by the procurator's office of such methods as dependence on the masses, investigation and study, search for the truth and concrete actuality in its investigation, but insured objectivity and comprehensiveness in trying the case.

In order to resolve the tasks placed before people's democratic justice, it is necessary to establish objective truth in a case--accord in the conclusions of the court, procurator's office, and the investigation of objective reality. The establishment of truth is a firm task of the people's democratic process. Objectivity and comprehensiveness in the process of collecting evidence will not be achieved if all circumstances dealing with the case are not investigated fully and comprehensively, in particular, if all objections on the part of the accused against the indictment are not verified, and if evidence refuting the indictment is not verified alongside evidence supporting the charge. A one-sided investigation of a case, determined at collecting only materials for the prosecution, ignoring conflicting evidence, is a violation of the principles of investigating a case, which are implemented by an objective and compre-

hensive investigation and trial of a case.

Objectivity also determines the structure of the people's democratic criminal procedure, which carries out two functions at the same time: the function of proving the guilt of an individual and the function of defending him. The observance of objectivity is an essential condition of obtaining objective truth in a case. A guarantee of the attainment of objectivity is the right which is established by law for the accused to challenge judge and procurator, to appeal their unlawful acts, to become acquainted with all materials bearing on the case and to initiate proper petitions for supplementary investigations. Complete and comprehensive investigation of a case has close connection with the objectivity of process. This is achieved only if all circumstances having a bearing on the case are revealed. The organ of investigation and the court possess the right to determine in each concrete case the degree of sufficient completeness of collected materials on the case. Without complete investigation comprehensiveness of investigation is impossible, that is, the investigation of all versions possible of the given case.

The court must pass its sentence only when its conclusions correspond to reality, and this can be achieved only with the proper conduct of the trial, when the court is not bound by formal evidence, and all of its activities are directed toward establishing the true state of affairs and facts testifying both against the indictment and in defense of it. This is achieved by the fact that the court, in passing a decision during a court session, may pay heed only to that evidence which was examined during the court session. The entire structure of court investigation is subordinated to this goal, and during the process of investigation the court and the two sides in the case may directly question witnesses, announce the contents of papers having a bearing on the case, inspect material evidence introduced at the trial, question the accused and witnesses in such a manner that it will be possible to obtain truthful testimony without any form of constraint or intimidation of the accused or witnesses. The implementation of the principle of objectivity is possible only in a court which is completely independent from the two sides in the case. As a result of the implementation of the principle of objectivity and comprehensiveness, the sentence can be passed and punishment be meted out only when the court itself personally receives all evidence and evaluates it.

In this principle the principle of the independ-

ence of the court and its subordination only to law which is proclaimed by the Constitution is incorporated, since the court must pass sentence only on the basis of the law and positively established facts. Objective truth can be established only by a court which is a truly just court according to its class nature. Such a court is the people's democratic court of the CPR.

The goal of exploiter "justice" is the establishment of a "truth" which is advantageous to the bourgeoisie and defends its interest. In criminal procedure of imperialist states only that is truth which is in accordance with the reactionary nature of the class bourgeois court. These courts, as well as the organs of the police and investigation, not only ignore objectivity in their activities but create judicial sham trials, masking harsh measures against the working class with the aim of suppressing the revolutionary movement. Ignoring the principle of objectivity is a consequent feature in the legislation of bourgeois countries. In the already mentioned Criminal Procedure Code of old China, Article 116 stipulated that "withesses who had been properly questioned during the inquest, if their testimony does not arouse suspicion, are not required to be called again . . ." Having made a preliminary investigation and coming to the conclusion that the testimony of certain witnesses gives no cause for doubt, the judge is not compelled to call them for questioning during the trial. Thus the outcome of the trial is decided ahead of time and the trial itself is a form which must be observed.

Considering that most cases in old China were tried by a local court with a single judge, one can come to the conclusion that the principle of objectivity and comprehensiveness was not a reality in the court on the direct instructions of the law, which limited the possibility of establishing objective truth. The Law on the organization of judicial institutions of the Chinese Republic directly pointed out the non-obligatory nature of obtaining truth in a case and allowed various infractions during the process. Article 5 of this Law stipulated: "In trying cases, in case it is revealed that the execution or order of process does not correspond to the instructions of present law, that part of the trial which has already taken place shall remain in force." The following examples can testify how the sentences in former Chinese courts were passed on the basis of "objective and comprehensive" collection and investigation of evidence. One case being tried in court consisted in the fact that the mother of Fang, a Chinese girl, had seized her daughter by the dress during a quarrel, when

the latter was attempting to flee. The daughter fell back and knocked over her mother, who died from the injury inflicted. Another case was that of Tan Ming, who scalded himself with boiling water. His mother ran toward him, slipped on a spot where the water had spilled, fell and died from injuries received during the fall. Both children were declared guilty of the death of their mothers. Li Hung-Chung, running after a person he suspected of attempted theft, fell during his struggle with him and hit his mother while falling, from which the latter died. The court pronounced Li Hung-Chung guilty of his mother's death and sentenced him to be strangled to death.[72]

9. Publicity (Officiality)

The principle of publicity in criminal procedure of the CPR consists in the fact that criminal procedure is conducted in the interests of the people's democratic state, and state organs--the procurator's office and the court, in accordance with their competence, which is established by law, have the obligation to initiate criminal investigation of each crime committed and carry out all necessary procedural actions, independent of the will and discretion of those persons suffering loss or other interested persons. Publicity presupposes the absence of principal contradictions between the interests of the state and the individual and provides for an organic combination of these interests.

Doubtlessly the truly democratic nature of the principle of publicity in Chinese people's democratic criminal procedure presupposed not only the initiative of criminal investigation and all measures directed at exposing the criminal, but a full investigation of all circumstances bearing on the case and the maintenance of the rights and lawful interests of all persons involved in the case, a necessary condition for carrying out the tasks of justice. To guard the rights and lawful interests of citizens, a function which is carried out by the organs of the court, procurator's office and investigation in line with their professional obligation, forms a central element of the principle of publicity in criminal procedure in the CPR.

The principle of publicity in people's democratic criminal procedure has particularly great significance for carrying out the tasks of justice. The Law on the organization of people's courts (Article 3) and the Law on the organization of the people's procurator's office (Article 4) provides that punishment shall be meted out to all crimi-

nal elements, and the people's court and the people's procurator's office are obligated to mete out punishment for every crime in the interests of the state. Since the law demands punishment for persons who have committed crimes, the court and organs of the procurator's office have the duty to investigate and examine criminal cases, as a rule, on their own initiative, independent of the initiative, will and discretion of those persons suffering loss or other interested persons.

Article 10 of the Law on the organization of the people's procurator's office stipulates that upon discovery of a crime the people's procurator's office must initiate action in accordance with the established order, conduct investigation or turn over the matter to the organs of state security for investigation. The court and the organs of the procurator's office must, in each concrete case of crime committed, take all necessary lawful measures for exposing the criminal and subjecting him to just punishment. During the period of the formation of the CPR and during the first years of its existence, the obligation to initiate and investigate criminal cases lay basically on the organs of national security, and the trial of the cases--on the courts. However, all cases of counter-revolutionary crimes tried by the people's courts were initiated by the people's procurator's office.[73] Other criminal cases could also be initiated by the procurator's office. In addition, institutions, enterprises, organizations, private citizens and organs of national security could petition the people's court and directly instigate indictment. A plea of guilty by the criminal gave the courts the right to initiate criminal proceedings. The people's court could initiate proceedings on its own initiative. Trial of a case was within the exclusive competence of the court. After the establishment of a single unified structure for the people's procurator's office and the consolidation of its organs the People's Supreme Procurator General's Office passed a resolution, according to which all people's procurator's offices have assumed the function of initiating criminal proceedings since 1956.

This means that all criminal cases, with the exception of insignificant cases of private accusations, are initiated by the people's procurator's office, and the court does not have the right to take up independently criminal cases for examination and investigation, except for cases of private accusation. After proceedings are initiated and investigation is conducted, the case is tried in court.

Proceeding from the existing system of instigation

and trial of criminal cases, it is possible to come to the conclusion that the principle of publicity in Chinese criminal procedure means the following: the procurator, having established the fact of crime, is obligated to initiate criminal proceedings, conduct an investigation or assign it to organs of state security (but under the supervision of the procurator's office), to determine the structure of the crime and turn over the case to the court, which must try the case and punish the criminal if there is a basis to do so. Due to the principle of officiality, the court is not bound in trying and deciding criminal cases by the demands of the prosecution, nor by the totality of evidence collected and presented by the prosecution and the defense. The principle of publicity, as all other principles of Chinese criminal procedure, assures that the tasks of justice are carried out by giving the court an active role both in the direction of the trial and in the collection and elicitation of evidence by means of obligating the procurator's office to initiate criminal proceedings and support the indictment.

The principle of officiality is not only expressed in laws and other acts, for guarantees in practice have been created for its implementation. Such a guarantee is provided by the independence of the court and the new organization of the procurator's office, which was dictated by the basic changes in the nature and tasks of the state. From a weapon for suppressing the workers, as the procurator's office was in the former China, it has become a true guardian of people's democratic legality, and a powerful weapon of the people's democracy in the struggle against the enemies of the workers. In view of this the procurator's office occupies an entirely new position in the state which guarantees it full independence. The established independence of the procurator's office in court from the influence of local organs and individuals assures a full and real implementation of the principle of officiality in Chinese people's democratic criminal procedure.

CHAPTER TWO

INSTITUTION OF CRIMINAL PROCEEDINGS AND PRELIMINARY INVESTIGATION

People's democratic criminal procedure in China is made up of individual stages which are interconnected, differentiated by their concrete tasks, which originate from the general tasks of criminal procedure and are also differentiated according to the organs carrying out these procedural activities at a given stage, and by the nature and procedural form of these activities. All stages in criminal procedure join to form its system and are not broken up into customary and extraordinary stages. There are eight stages in criminal procedure in the CPR: 1) institution of criminal proceedings;* 2) preliminary investigation; 3) preparatory action by the court before trial; 4) trial; 5) review of sentences not yet entering legal force; 6) review of sentences having entered legal force; 7) examination of sentences and death penalty verdicts; 8) execution of the sentences.

Documents which delineate the stages of criminal procedure are the following: enactment to institute criminal proceedings, which initiates the case action and which, in Chinese criminal procedure, means that the investigator has begun execution of the case; the formal indictment, which ends the stage of preliminary investigation; the decision of the court in the stage of the process preparatory to trial, which signifies the end of the stage of binding over for trial; the sentence, which indicates the end of the trial; the decision or sentence of a higher court, which tries the case as an appeal function or as a function of judicial supervision.

The task of the preliminary investigation stage in Chinese criminal procedure consists in investigating the case and collecting evidence, on the basis of which the court subsequently decides the question as to whether the crime took place and as to the guilt of a concrete person. This determines the place of preliminary investigation in the system of people's democratic criminal procedure, the role and significance of the preliminary investigation stage in the implementation of people's democratic justice. A qualitatively complete investigation is a decisive condition for the correctness

*/This means that the case is declared open, upon the commission of a crime/

of the trial and the examination of the case in substance. The nature of the activities of the organs of preliminary investigation and the volume of rights granted by law to these organs make it possible for them to be the first to bring out socially dangerous phenomena, to isolate, in case of necessity, socially dangerous persons through preliminary conclusion and to carry out prophylactic and educational work in combatting crime. Therefore, we must consider that the preliminary investigation stage also is a direct protection to people's democratic law and order: the organs of preliminary investigation carry out their work not only for the court in the narrow sense of this word, that is, for trial purposes but also for implementing tasks based by people's democratic justice as a whole.

The activities of the organs of investigation include collection, review and evaluation of evidence and the receipt of reliable conclusions in the case based on this. Since the purpose of preliminary investigation is identical to the purpose of trial and the means of proof are identical for both stages of criminal procedure, the limits of investigation also coincide. Consequently, the basic circumstances which are significant in trying the case in court are at the same time the same circumstances which are significant in conducting preliminary investigation. The completeness of collected evidence during the stage of preliminary investigation determines in the general rule the scope covered by the trial. Conducting investigation of crime, the organs of investigation are constantly dealing with real persons, citizens of the state. Therefore the task of these organs is the comprehensive safeguarding of the rights and lawful interests of those persons directly involved in the case and the interests of those persons affected by the investigation. If the laws are strictly complied with during the stage of preliminary investigation, on the one side the goal is achieved of exposing the crime and uncovering the criminal, and on the other--the interests of citizens are defended.

The stage of preliminary investigation is based on the same principles which are inherent in the Chinese people's democratic process as a whole. Such democratic principles of criminal procedure such as the principles of people's democratic legality, publicity, comprehensive verification and evaluation of evidence, the use of the national language in court, the granting the accused the right for defense and several others which pertain to criminal procedure as a whole, extend also to

this stage. Objectivity of investigation, absence of prejudice on the part of the person conducting the investigation are basic demands in Chinese criminal procedure. The principle of objectivity of investigation emanates from the tasks of the investigation organs, which are interested in establishing only actual crimes and their actual perpetrators. The practical implementation of objective investigation means that during the preliminary investigation the investigator must collect evidence not only implicating the suspect in the crime but evidence refuting the accusation, and facts and circumstances must be brought out which not only augment the degree and nature of responsibility but mitigate them.

Procedural guarantees of the principle of objectivity during the stage of preliminary investigation of a case are the implementation by the accused of the right to defend, not limited by the investigator, as well as the regulations according to which the organs of investigation have the obligation to comply with the applications and petitions of the accused, if the circumstances for which he is petitioning might be of significance for the case. Completeness and comprehensiveness of preliminary investigation mean that the investigator may consider the investigation of a case closed only when all doubt in his mind and contradictions in the case have been removed and the picture of the crime is completely clear, with the identification of those persons who committed the crime and the role played by each. The determination of the limits of investigation in a concrete case is an expression of the completeness and comprehensiveness of preliminary investigation. The limits of investigation are usually determined by the object of evidence. Preliminary investigation is conducted only for the task of establishing facts, which taken together present a picture of the crime, as well as the identity of the criminal. Without this determination the preliminary investigation cannot be considered complete and successful.

From this conclusions are made in criminal procedure in the CPR that a determination of the limits of preliminary investigation is joined with the obligatory posing and solution of the following questions for each criminal case: a) how is the crime committed? The solution to this question allows the conclusion to be drawn as to whether a crime took place at all and what type of crime: For example, is it murder, suicide, or an accident; b) who committed the crime? A definite person or persons who committed the crime, their accomplices

and accessories are established. The role of each of them is determined as well as the nature of their person; c) where was the crime committed? The answer to this question is particularly significant in cases where crimes have been committed at various spots. It is essential to establish the place or places where criminal acts were committed and the nature of these spots; d) when was the crime committed? This question is important in cases where the necessity arises to establish an alibi for the accused or, on the contrary, to establish that he was at the scene of the crime at a definite time on a definite date; e) what were the motives and purposes for committing the crime? Establishing motives and purposes makes it possible to qualify the crimes correctly; f) how and with what was the crime committed? The method of committing a crime and the implements used characterize the accused, aid in exposing him and in the determination of the correct degree of punishment.

At the end of the investigation all circumstances and conditions of the crime must be brought out, as well as a complete characterization of those persons who commited it. Without a clear-cut and lucid answer to all the above questions it is impossible to consider the preliminary investigation successful and as having achieved its aim. If there are no answers to these questions in the case, the case cannot be brought before court, and the case should be dropped.

Speed of investigation signifies timeliness and activeness of investigation. Tardiness and passivity of investigation result in the loss of material and other evidence, make it possible for the accused to take steps for the destruction of evidence or falsification and, finally, a lengthy investigation and delay of trial creates the impression of impunity to crime, and the trial does not have the desirable educational effect. The rapid and operative investigation, the timely and careful conduct of all investigation operations are an important condition for the success and effectiveness of preliminary investigation, a preliminary condition for the correct outcome of a case before the court.

1. Organs of Preliminary Investigation

While the CPR has no code of criminal procedure, the activities of investigation organs fall within the framework of departmental instructions drawn up on the basis of generalizing the experience of the operations of investigative organs. The People's Supreme Procurator General's Office began in the fall of 1953 to form

model-experimental procurator's office organs. By November 1954 the All-Chinese Assembly of Procurator's Office functionaries crystallized the experience of the work of 157 test areas and gave instructions to the organs of the procurator's office to carry out the functions of the procurator's office on a broader scale.[1] The People's Supreme Procurator General's Office drew up a plan during 1955 of a model system for conducting investigation, on the basis of constant study and initial summarization of local experience. In order to achieve even greater correspondence between the system with the actual conditions in the country, investigation functionaries of 13 regions were delegated in 1956 to become acquainted with 199 special reports by the people's procurator's offices of 24 provinces, 1 autonomous region, 35 cities, 2 districts and 31 counties, dealing with the test implementation of the investigation system. These reports summarized 3993 cases, and after constant study and correction of the plan, in the second half of 1956 the Model System for Conducting Investigation by the people's procurator's offices of all levels was drawn up.

Approximately up to the middle of 1955 investigation of important and serious cases was conducted by organs of state security.* Certain less important cases were investigated by the people's courts, to which institutions, enterprises, organizations and private citizens appealed directly with a petition to institute legal proceedings. A small percentage of cases was investigated by the people's procurator's office. In 1955 there was a division of functions between the court, procurator's office and organs of state security. The people's courts have since then not conducted preliminary investigation in public indictment cases, but they possess the right to conduct certain investigations in cases of private accusation (slander, defamation of character, bigamy, immoral conduct in the family, feigned injuries, etc.) in order to clear up circumstances reported in the petitions and complaints of the injured parties.[2]

Preliminary investigation is conducted now by organs of the people's procurator's office and state security. The activities of these organs, depending on the nature of the crime, are limited. Proceeding from the historical development of criminal procedure in the CPR, the organs of state security are the basic and main organs of investigation. They conducted and are conducting investigations in the great majority of public

*/Kung an -- Literally, public security/

indictment cases. The procurator's office as an organ of investigation began to function comparatively recently. Therefore, the investigative organs of the people's procurator's office investigate about one-fourth of all cases coming before the investigative organs of the country, whereby these are the least dangerous for society; the more dangerous cases are investigated by the organs of state security. The organs of the people's state security conduct investigations chiefly in cases of treason and other counter-revolutionary crimes, in cases of violation of public safety (for example, hooliganism, violation of traffic rules, if they are criminal violations, etc.).

The investigative organs of the people's procurator's office investigate primarily cases of crimes committed in office, violation of industrial safety regulations, serious infractions of labor discipline, crimes against marriage or the family, certain cases of crimes against the person, rights and lawful interests of citizens. Depending on the nature of the crime, the investigation of individual crimes can be conducted by the organs of public security as well as the people's procurator's office. There is no legislative delimitation. In practice the investigative organs themselves carry out a delimitation: for example, murder cases where a weapon is involved are investigated by organs of public security, while suicide and manslaughter--by organs of the people's procurator's office. In respect to certain cases, investigation can be initiated by organs of public security (for example, cases of crimes against the formation of cooperatives in agriculture, corruption, crimes covered by the Temporary Regulations on punishment for undermining the state military system); but if these organs see no counter-revolutionary premeditation in the actions of the accused, the cases may be transferred to organs of the people's procurator's office for further investigation. At the same time the people's procurator's office, on the strength of Article 10 of the Law on the organization of the people's procurator's office, may be transferred for investigation to the organs of national security, if it is established that the case should be investigated by these organs, or if these organs can more effectively conduct investigation. The powers of investigation in cases of rape and other sex crimes are not limited. These cases are instigated and investigated by the organ which first receives information on the crime. There is no difference in the methods of investigation used by the organs

of state security and the people's procurator's office, for their activities are clothed in procedural form and are conducted in strict accordance with the democratic principles established by the Constitution.

There is as yet no unified procedural law in the country, and the procedural formation of individual stages of criminal procedure differ. As will be shown, the institution of criminal proceedings and bringing to trial are conducted in various procedural forms. At the same time the method of arrest, detainment, search, interrogation, presentation to the accused of the completed execution of the case and binding over for trial are conducted in identical procedural forms and are identical methods both in the organs of state security and the organs of the people's procurator's office. Investigation of criminal cases is not divided into inquiry and preliminary investigation. In the system of organs of state security there is no delimitation between organs of investigation and inquiry. Not only in cases of counter-revolution but all other cases, investigation is conducted by the investigators of these organs. Investigators from the procurator's offices conduct investigation in the people's procurator's office.[3] The regulations on the organization of the committee to maintain state security (1952) and the Regulations on the organization of state security divisions (1954) provide for the formation of organs, one of the tasks of which is aid to organs of investigation.

Learning of the perpetration of a crime, the functionaries of the state security sections or committee on maintaining state security are obligated to inform the state security division or the people's procurator's office of a given locality, guard the scene of the crime, and upon the arrival of the investigator to aid him in carrying out urgent investigation procedures as well as to carry out these acts on his instructions. But neither committees nor sections independently conduct any investigation work. Thus only definite organs of state security on instructions of investigative organs can conduct investigation or carry out separate investigative acts. The masses lend great aid to the investigative organs in investigating crimes and apprehending criminals. From experience in combatting crime it is obvious that the aid given by the masses is a basic condition for a substantial decrease in crime in the CPR and the elimination of a large number of individual types of crimes, which were committed in old China before the liberation of the entire continent.

Supervision over the preliminary investigation by all investigative organs is exercised by the people's procurator's office.[4] The chief procurator of the people's procurator's office decides the question of instituting criminal proceedings, conducting preliminary investigation by the investigators of the procurator's office and turning over cases to an organ of state security for investigation. Article 11 of the Law on the organization of the people's procurator provides that if the people's procurator's office discovers an infraction of the law in the investigative activities of the organ of state security of the same level, it is required to report this to the organ of state security for the violation to stop. If after the investigation is complete the organs of state security consider it necessary to bind the accused over for trial, they must comply with the law and transfer the case to the people's procurator's office, which makes the final decision on instigating court action. The decision of the procurator's office is obligatory for the organ of state security, which in case of disagreement with the decision can appeal it to a higher people's procurator's office.[5]

The people's procurator's office, in reference to cases investigated by investigators from the procurator's office and the organs of state security, exercises supervision over the investigation from the moment of the instigation of proceedings to the moment when the case is transferred to the people's court. The chief procurator of the people's procurator's office or, on his instructions, the procurator from the same office, may directly participate in the investigation conducted by organs of state security, acquaint himself with any matter, ask questions and demand answers from the organs of state security. In addition the chief procurator and his assistant can participate at meetings in the organs of state security held for discussing methods of investigation of specific cases or discussion of other problems of investigation. But the people's procurator's office cannot interfere in the administrative activities of the organs of state security.

2. Instituting Criminal Proceedings

In Chinese criminal procedure the institution of criminal proceedings is viewed as an independent stage in criminal procedure. It is an extremely important stage in the activities of the investigative organs.[6] At this stage the question is decided as to whether criminal proceedings should be instituted in the given concrete case.

Only after the decision is made to institute criminal proceedings do the investigative organs obtain the right to carry out all necessary procedural acts in the given case.[7] Many of these acts seriously affect the interests of citizens and may be conducted in a coercive manner. It is therefore extremely important to determine that moment from which investigative organs possess broad rights and after which the case can proceed to the remaining stages of criminal procedure.

However, not all criminal cases go through each stage of criminal procedure. Certain cases, after certain investigations and after instituting criminal proceedings, are closed while still in the stage of preliminary investigation and are not brought to court; certain cases are dismissed by the court either in preparatory or court sessions; for certain categories of cases preliminary investigation is not required. But the stage of instituting proceedings is required for each case whereby the investigative organs, during the process of verifying materials, come to the conclusions that there are signs of crimes present in the materials being investigated by them. All criminal cases can be divided into two groups: cases demanding preliminary investigation, and cases tried without preliminary investigation. The first group includes all cases within the investigative jurisdiction of the procurator's office and organs of state security; the second--cases of so-called private accusation. In accord with this there is another method of instituting proceedings.

The stage of instituting criminal proceedings has great political and legal significance.[8] This stage, as criminal procedure as a whole, is for assuring correct, purposeful, active combat against crime. A criminal case cannot begin without the stage of instituting criminal procedure. Article 10 of the Law on the organization of the people's procurator's office requires the people's procurator's office to conduct investigation of criminal cases. The people's courts are required to try cases only if these cases have passed the institutional stage. This means that the proper organs (court, procurator's office and organs of investigation) have taken a decision clothed in the form of a resolution or determination to institute criminal proceedings.

Not only bringing an accused to trial but the very principles of investigation and all the operations of the investigative organs in clearing up the circumstances of the crime comprise the system of coercive measures affecting the interest of individuals and organizations. Citizens are obligated to appear for interrogation at the re-

quest of the investigator, participate as witnesses during the execution of inspection, search and seizure, appear to carry out the duties of experts and interpreters, while certain citizens may be subjected to search and seizure, and citizens may be subjected to forced examination. Officials may be required to give the investigator various types of information and personal information necessary for the investigation, accused may be removed from their jobs, and the execution of inspections and seizures may be allowed.

Such demands cannot be made of officials and private citizens if criminal proceedings have not been instituted. Therefore, the primary documents of criminal proceedings, the institution of criminal action, must conform to definite procedural forms, guaranteeing the solid foundation to the case and guaranteeing citizens from unfounded limitations of their rights and interests in connection with the conduct of the case. In investigative practice two terms are strictly differentiated: "Institution of criminal proceedings" and "institution of criminal prosecution." The first term means the institution of proceedings in respect to a fact, occurrence of crime by person or persons unknown, who will be the accused. Usually when materials and information are received by the procurator, the perpetrator of the crime is unknown, and even if there are indications of a definite person being the perpetrator of the crime, these indications always need verification, investigation, further substantiated evidence, which can be obtained only at further stages in the process, and not when the case is opened.

In instituting criminal prosecution the person accused of the crime is already known, and criminal prosecution can take place only in respect to this person. Therefore investigative practice refers institution of prosecution not to the moment of instituting proceedings but to a special procedural moment at the preliminary inquiry, where the given person is arraigned as defendant. "The institution of criminal proceedings is based on the fact of crime, while the identity of the criminal is brought out at the following stage of investigation."[9] But in certain exceptional cases, provided in Article 5 of the Regulations on arrest and detention in the CPR, institution of criminal proceedings and institution of criminal prosecution take place at the same time, but are formulated by two legal documents: an enactment to institute criminal proceedings and an enactment accusing a specific person of a crime.

These are cases when a person is arrested just prior to the crime, in the act of the crime or immediately after the crime has been discovered; when the victim or witnesses make personal identification of the person having committed the crime; when evidence of crime, etc., is found on the person or in the home of the suspect.

At this stage of state development in the legislation of the CPR the question of the institution of criminal proceedings is not fully treated. However, the maintenance of the rights and lawful interests of the accused and other persons, the interests of whom are affected by the institution of criminal proceedings, are guaranteed by the Constitution and other legislative acts, the truly popular composition of the organs of the procurator's office, the investigation organs in the court, which are obligated to maintain the rights and liberties of citizens, as well as by the operations methods of these organs, which take place in forms most applicable for establishing the truth in each concrete case.

Organs which have the right to institute criminal proceedings are the following: the chief procurators of people's procurator's offices; investigators of people's procurator's offices, whereby their decision to institute proceedings is ratified by the chief procurator; organs of state security and the courts. Until approximately the middle of 1956 most proceedings were instituted by the people's courts, while cases of counter-revolutionary crimes--by the organs of state security and the procurator's office. Institutions, enterprises and organizations could directly bring forth an indictment in court on crimes in office, committed by workers and employees of these institutions, enterprises and organizations. The people's court could, at its own initiative, institute proceedings, and if it considered that investigation was necessary it would turn it over to the procurator's office or organ of state security to conduct preliminary investigation, while if it considered that preliminary investigation was not necessary, it would inform the procurator's office of its imminent participation in the case during trial.

After an analysis of judicial and investigative process in 14 large cities (1954-1955) the People's Supreme Court and the People's Supreme Procurator General's Office came to the conclusion that it was necessary to change the system of instituting criminal proceedings in accordance with the Law on the organization of the people's procurator's office, proceeding from the fact that the courts, procurator's offices and organs of

state security cooperate with one another, but that work is distributed among them, and each of these organs has its own duties, aids each other and exercises supervision over one another. Trial, preliminary investigation and institution of proceedings operations were delimited.[10]

At present criminal cases, in accordance with Articles 10 and 11 of the Law on the organization of the people's procurator's office, are initiated by organs of the people's procurator's office and organs of state security in matters coming within their competence. The people's courts have the right to institute proceedings only for insignificant criminal cases of so-called private indictment. A definite condition for instituting criminal proceedings is the presence of definite grounds and bases. Grounds for the institution of criminal proceedings are sources which contain reports on the crime and which obligate the procurator's office, court and investigative organs to decide whether a criminal case should come to court. Competent organs do not have the right to institute criminal proceedings without due cause.

Grounds for instituting criminal proceedings, as established by practice, are the following: 1) petition by private citizens; 2) petition by various organizations; 3) information furnished by government institutions; 4) information furnished by enterprises, schools, factories and officials; 5) a plea of guilty; 6) petition by the defendant; 7) information in the press; 8) the direct discretion of organs of the procurator's office and state security; 9) materials sent by the court to organs of the procurator's office or of state security; 10) materials from forensic medical examination upon autopsy, and other examinations; 11) complaints by the victim, etc.

Petitions by private citizens and various organizations are the most common causes for instituting criminal proceedings. During a period of 18 months (from the beginning of 1955 to July 1956) the organs of state security of Kwangtung province received 100,000 different accusatory petitions from the public, many of which aided in bringing dangerous criminals to justice. For example, in Tienpaihsiang county a woman by the name of Chang Hsiu-hui aided in exposing two counter-revolutionaries who were working as bookkeepers in a cooperative. One of them turned out to be a spy, and the other--a bandit.[11] Communications on crimes committed can be done orally or in written form. A functionary of the procurator's office, organ of state security or court incorporates the information in a statement. Criminal procedure in the CPR has eliminated excess formalities connected with serving complaints or petitions, and

declarations made by citizens in any form are viewed according to content.

Each people's procurator's office has a people's reception point, where complaints and petitions of private citizens are received and certain questions by private citizens are answered. At the people's reception points all statements by citizens can be put on paper, if the citizen making the statement cannot draw up the paper himself. People's reception points are obligated to inform the citizens making the petition of the results of the investigation of their petitions or complaints. In particular, if a declaration has been made concerning a crime which has been committed, after the procurator's office has verified the statement and made a decision, the reception point is requiredto report to the person making the declaration as to whether criminal proceedings have been instituted or whether the declaration has been dropped. As a rule, it is up to the person himself to decide whether he should report criminal actions known to him. The state, guarding the interests of the citizens, has furnished the possibility of confidential communication on counter-revolutionary crimes which have been committed.[12]

In respect to persons accused of certain categories of crimes, a rule has been established according to which a person is exempted from punishment if, after personal repentance, he aids in uncovering another crime.[13] In the aim of uncovering crimes affecting state secrets, the law provides for praise and reward to those persons who expose or arrest persons illegally using, stealing and selling information comprising state secrets.[14] However, criminal law provides for cases whereby citizens are obligated to report to the authorities on the commission or preparation for commission of a crime. Criminal responsibility for not reporting such cases is stipulated, for example, by Article 6 of the Temporary Regulations on punishment for undermining the state monetary system.

In certain cases statements can be made with the aim of directing investigative organs along a false path, that is, fraudulent denunciation is possible. Institution of criminal proceedings for the false denunciation of citizens and officials for a crime which has been committed or is in the process of preparation is an extremely rare phenomenon in the practice of the judicial organs of China, since false denunciations are rare themselves, but there is a possibility. The People's Supreme Procurator General's Office has constantly directed the attention of procurator's office functionaries to the fact

that in receiving declarations from citizens in an oral or written form the person making the declaration should be warned of the consequences for a consciously false denunciation. A prominent position among grounds for instituting criminal proceedings is occupied by voluntary admissions of guilt. In Linglin county of Hunan province, after a propaganda meeting on the basic regulations for developing agriculture, 46 counter-revolutionaries and other criminals came forward with an admission of guilt and turned over to the authorities weapons and other evidence of their criminal activities. In Tientsin 500 counter-revolutionaries came forward with voluntary admissions of guilt between July 1955 and March 1956, and after cases were tried concerning the heads of counter-revolutionary organizations on 31 May 1956 in this city, and the sentences were magnanimous, in the course of three days 55 major counter-revolutionaries voluntarily turned themselves in to an organ of the people's authority. According to figures from the province of Liaoning, between September and the beginning of November 1955 28,010 persons voluntarily confessed their guilt.[15]

It is essential to keep in mind that sometimes a person may confess guilt in order to hide another, more serious crime or to create conditions for committing crimes or freeing close associates from responsibility. Therefore investigative practice has established regulations whereby a careful verification is to be made in all cases of voluntary admission of guilt, before the institution of criminal proceedings, and the statement of guilt should include not only a description of the crime committed but reference should be made to definite evidence. Criminals who knowingly give false testimony, giving them as open confessions during a plea of guilty, or those who use such a plea in order to conduct counter-revolutionary activities, are subject to punishment if enough evidence is collected to substantiate this.

The spirit of Article 10 of the Law on the organization of the people's procurator's office provides that one definite ground is insufficient for instituting criminal proceedings, so there should also be present a basis for instituting proceedings which would be of factual nature, necessary in this stage of the process. This means that definite grounds--indications of crimes committed--are verified for establishing whether the indicated fact of crime has taken place in reality, as to whether there are indications as to the circumstances of the crime in the materials received, whether criminal penalties should be applied in a given case, whether there

were circumstances hindering the institution of criminal proceedings. However, this does not mean that the beginning stage of criminal procedure should provide evidence which would fully confirm the make-up of the crime and identify those persons guilty of committing the crime. Certain data on the commission of the criminal act must be in the possession of the organ which is considering the question of instituting criminal proceedings.

Before the institution of criminal proceedings the question of possible application or non-application by the court of criminal penalties is decided by the person examining the statement concerning the crime, proceeding from the fact that in certain cases voluntary admissions of guilt exempt the persons from punishment or that measures of administrative coercion might be used, and that there may be circumstances impeding the institution of proceedings. Proper foundation for instituting criminal proceedings forms the essential condition for observing legality in combatting crimes.

In certain cases, even with the presence of definite grounds and sufficient bases, proceedings cannot be instituted. The institution of criminal proceedings is impossible under the same circumstances which eliminate the possibility of criminal prosecution. Such circumstances in practice and in legislation of the CPR are the following: the statute of limitations, the obvious insignificance of a crime and lack of purposeful punishment; the death of the person having committed the crime; amnesty or pardon; non-attainment of legal age by the person committing the crime; mental illness on the part of the person having committed the crime; expiation of his guilt by the person having committed the crime, due to which this person is no longer socially dangerous; commission of a crime as a result of intimidation or deception on the part of counter-revolutionary elements. However, in the latter case proceedings can be instituted, depending on the degree of participation of the person in the crime, on the nature of the coercion and the gravity of the crime, but the person can be completely freed from punishment or can receive a mild sentence.[16] The characteristic peculiarity of Chinese criminal procedure is a situation whereby a sentence which has come into force does not impede the institution of criminal proceedings if the organs of investigation once again receive information on a given crime. In these cases the investigative organs proceed on the assumption that the sentence might have been incorrect, and therefore investigation of the case is necessary. If the investigative organs, as a

result of investigation, come to the conclusion that the sentence was correct, they draw up a resolution refusing to bind the case over for trial. Otherwise the case, with the protest of the procurator, is handed to the people's court for investigation within the framework of judicial supervision.

In Chinese criminal law, criminal responsibility begins at the age of 13 for certain types of crimes, and from 15 for all types of crimes, while in practice it is particularly stressed that in formulating punishment for juvenile offenders the court proceeds from that special concern shown by the people's democratic state towards youth. The question of the responsibility of the person having committed a crime can be cleared up both before institution of criminal proceedings and during the investigation. In order to establish the responsibility of a person by the organs deciding the question of instituting criminal proceedings for conducting the investigation, a psychiatric examination is conducted. If after the examination it is established that the person who, as a result of mental illness, during the crime was not conscious of the fact that his action was socially dangerous, or that he could not be held responsible for his actions, this person would not be liable to criminal responsibility. If as a result of an examination it is established that the person was stricken by insanity after the crime was committed, medical care would be taken of him, and in case he recovered--measures of criminal punishment. We should stress the question of the admission of guilt and sincere repentance by persons who have committed certain crimes, due to which fact criminal proceedings are not instituted, if there is a possibility to clear up without a preliminary investigation the circumstances surrounding the criminal actions of the person who voluntarily admitted his guilt.

This proceeds from the policy of the Communist Party and the government of the CPR in relation to counter-revclutionary elements: ". . . the course of a mutual combination of severity and discretion conducted by the Party in its fight to wipe out counter-revolution found its incorporation in the policy with regard to counter-revolutionary elements, in the policy of combining punishment with magnanimity. The concrete contents of this policy consist of the following: it is necessary to punish hardened criminals, while those who have committed crimes under coercion should not be touched, those who have voluntarily admitted guilt should be treated with deference, and those who offer resistance--severely,

to those who merit it--lessened punishment or none at all, and for those who deserve great merit--reward."[17] On the basis of the resolutions of the Eighth Party Congress of 15 November 1956, a resolution was passed at the 51st Session of the Permanent Committee of the All-Chinese Assembly of People's Representatives on a lenient attitude toward remains of counter-revolutionary elements in the cities and on their labor. The resolution stated that the fight to suppress counter-revolution in the country had already gained a decisive victory, and a very small number of remaining counter-revolutionaries was becoming more and more isolated and split up. Magnanimous measures are taken with the aim of giving the counter-revolutionary elements the possibility of repenting and once against leading an upright life, as well as with the aim of the further liquidation of remains of counter-revolutionary elements.

Paragraphs 1 and 6 of this Resolution provide that ordinary counter-revolutionary elements having committed minor crimes and having ceased to engage in counter-revolutionary activities, would not be charged for past crimes if they had seriously repented. If these persons, as well as those liberated after serving their sentences, were out of work, the government would help them find work. Local regional people's committees should announce that in the future those elements would not be called counter-revolutionaries who fully repented, and would not be held accountable for their past crimes. They should be named according to their profession: bench workers, officer workers, salesmen, etc. In addition to those circumstances mentioned which eliminate institutional proceedings, Chinese criminal procedure provides that a criminal action cannot be instituted against persons possessing the right of extraterritoriality. The question of the responsibility of these persons is decided in each individual case according to diplomatic practice. The people's court, the organs of the people's procurator's office and of state security are obligated to receive declarations and complaints about crimes which have been committed from citizens, organizations, institutions and enterprises, as well as to receive persons appearing for voluntary confession. If a declaration or complaint is made in a verbal form, it is entered into a document and the document is read to the person making the statement for his signature. The reception of declarations and complaints on crimes committed or in the process of preparation should be conducted by each of the above mentioned organs independent of whether the crime

mentioned in the complaint is within its competence for investigation. If it is established that the facts reported must be verified by another organ, it is necessary to transmit it immediately to the proper organ for verification, at the same time informing the person making the declaration where his declaration has been sent. This system eliminates unnecessary expenditure of time for the purpose of making the declaration and saves red tape in the process of receiving declarations and complaints.

In the practice of the organs of the procurator's office, the court and organs of state security a decision in the question of whether there is basis to institute criminal proceedings sometimes presents considerable difficulties, which proceed from the fact that declarations of citizens, institutions and organizations on instituting criminal proceedings often do not contain necessary data, on the basis of which the question of instituting action in the given case is possible. These difficulties are particularly common in cases where private businessmen and capitalists are accused of breaking laws; on events connected with infraction of industrial safety rules and industrial enterprises, coal mines, other mines and transport enterprises; on crimes in offices and counter-revolutionary crimes. Due to this the people's procurator's office and organs of state security must verify materials received from them before the institution of criminal proceedings. This verification is not conducted in the form of preliminary investigation or pre-investigation verification, but is conducted with special, independent methods, which consist in the following: 1) discussions take place in these organizations with individuals or groups of persons on the material of the declaration received from an institution, organization or enterprise; 2) supplementary materials for explanations are received from the persons who made the declaration, but not in the form of interrogation of these persons; 3) written instructions are given to the institution or enterprise, in which the declaration states that the crime has been committed, and these instructions provide for the organization of a commission of employees of this enterprise or institution for verifying the facts indicated in the declaration; after this the material is carefully checked and the organs of the procurator's office or of state security make a decision of whether or not to institute criminal proceedings; 4) functionaries of the procurator's or organs of state security visit individual institutions or enterprises with the goal of becoming acquainted with the facts; 5) the people's pro-

curator's office instructs the militia to verify certain facts stated in the declaration, but not through investigative operations; 6) the organs of state security detain persons in correspondence to Article 5 of the Regulations on arrests and detentions; 7) in order to verify materials at hand the investigator may talk to the person suspected of committing the crime.

As a result of the preliminary verification the competent organ must come to a definite conclusion--should criminal proceedings be instituted or not. In practice, strict delineation of forms of preliminary verification and preliminary investigation have not been achieved completely and cases occur whereby certain investigations are made (interrogation, search, etc.,) in the stage of the preliminary verification of materials received, although the organs of the people's procurator's office and of state security devote much attention toward completing preliminary verification without the use of investigation methods. When the people's procurator's office, after verifying materials received or without verification, considers that it is essential to institute criminal proceedings, the investigator draws up a resolution to institute criminal proceedings and transmits this to the procurator for ratification, after which the investigation begins. In case a crime is revealed by an organ of state security, the investigator of this organ must formally open the case and transmit his decision to open the case for the ratification of the head of the organ, after which the preliminary investigation is conducted. The people's court can institute criminal proceedings only in cases of private indictment; in all other cases the people's court, receiving a declaration concerning a crime committed or in the process of operation, or noting indications of crime in the actions of any person or persons, does not open the case itself but transmits materials received to an organ of the people's procurator's office or of state security for verification and a decision as to whether a criminal case is to be initiated.

Examining the materials received from private citizens, institutions, enterprises, organizations and the people's court, organs of the people's procurator's office or of state security can conclude that the case should be dropped since the materials include circumstances which call for it to be dropped. In this case they must draw up a decree dropping the criminal case and indicating the reasons serving as a basis for this. A copy of the decree, after ratification by the chief procurator of the people's procurator's office or the

head of the organ of state security, is sent to the person making the declaration. If the person making the declaration does not agree with the decision, he can appeal it in a higher people's procurator's office or in a higher organ of state security. Upon establishing not criminal actions but administrative misdemeanors as a result of preliminary verification, a copy of the refusal to take up the criminal case is sent not only to the person making the charge but to the chief of the organ or department in which the misdemeanor took place, in order to settle the question of the administrative responsibility of the guilty parties. A copy of the decree, accepted by the administration, is sent to the general supervision section of the given people's procurator's office for inspection and the application of any necessary measures.

3. The Defendant in A Criminal Action

In countries where authority is in the hands of the exploiting class, where there exist insoluble contradictions between state authority and the people, there is and can be no real safe-guarding of the rights of the accused in a criminal action. This question is resolved in an entirely different manner in the CPR, where the social and public interests of all citizens are maintained as one unity. The lawful interests and rights of each individual citizen are near and dear to the party and government and are a cause for their constant concern. The interests of the state are also dear to every upright citizen.

The Constitution of the CPR and other laws extend to citizens broad democratic rights and assure them of real, actual guarantees. The maintenance of the subjective rights of citizens is an important side of people's democratic legality. The indissoluble connection between the maintenance of the rights of the citizen with legality in the operations of state organs is manifested particularly clearly in a criminal action. Concern for the maintenance of the rights of the individual in a criminal action is not limited merely to guarantees of the rights of the accused. Legal rules safeguard the rights of all other persons participating in the trial. People's democratic criminal procedure, formed on principles of socialist democratism, is not limited to the fixing of the formal rights of citizens, but actually secures these rights. In view of this the question of legal guarantees has great significance and, in particular, the question of legal guarantees for the accused.

In Chinese criminal procedure the steadfast observance of legal guarantees, being a fast rule, aids in carrying out people's democratic justice. During the stage of preliminary investigation the accused has the right to defend himself. He is an active participant in the action, maintaining his rights and lawful interests. At this stage as throughout Chinese criminal procedure, the securing of broad, legal rights for the accused is not contradictory with the goals and tasks of people's democratic criminal procedure. The investigation leads to concrete results and proof in the matter is established only with the obligatory observance of rights extended to the accused.

The defendant in a Chinese criminal action is that person against whom sufficient evidence on the commission of specific crime is available and against whom an indictment is read according to established procedure. The system of legal acts which comprise a criminal action include an important act at the stage of preliminary investigation, by means of which a person is singled out as the defendant. This act formulates the indictment and specifies the person against whom the criminal prosecution has been initiated and who is to be made answerable for the criminal act. In order to accuse a person it is sufficient for the collected evidence to convince an objective investigator that the crime was committed by the person indicted. In indicting a person for a crime the question of his guilt in the crime is not settled. This question falls within the competence of the people's court, and only the people's court can resolve the question as to whether the defendant is guilty of the crime indicated in the formal indictment (and consequently, as a rule, in the declaration against the accused) or not .

However, this does not at all mean a weakening of the fight against crime, does not cause and cannot cause a weakening of vigilance, nor a weakening of the energy of investigative and procurator organs in prosecuting and exposing criminals, but it gurantees citizens against unfounded indictment and conviction. If the investigator is of the opinion that there is certain doubt as to the necessity of indicting a specific person, the investigator does not have the right to draw up the indictment decree, but is obligated to collect supplementary material, after which it is decided to drop the case or to make a formal charge. The indictment in Chinese criminal procedure has a strictly individual nature, that is, it can be directed only against that

person suspected of committing the crime. Therefore a criminal action cannot continue in the case where there is no defendant, or where the defendant has cnntracted an incurable illness, has concealed himself and cannot be located or has died.

Extremely significant is the question of the moment of the charges against the accused and the formal indictment. Here the practice of the investigative organs of the CPR strive to avoid excessive speed in bringing charges against the accused, as well as undue slowness, including artifical delays. The placing of a person under criminal responsibility in the organs of the procurator's office is conducted by the investigator drawing up a motivated document of charges against the accused. This document must be ratified by the procurator. In preferring formal charges, the investigator verbally explains to the accused the significance of this document. Subsequently the charges are signed by the accused and the investigator, and the accused is interrogated on the spot with regard to facts indicated in the charges.

For cases which are investigated by organs of state security, formal charges are not made. However, in cases where the arrest of the accused is essential, the organ of state security makes out a warrant for the arrest of the suspect, which is approved by the head of the organ of state security and sanctioned by the procurator, and which contains the charges against the accused. This document replaces the formal charges of criminal responsibility.

If there is no necessity for arrest, calling the suspect to the investigator's office--handing him the notification to appear as defendant--is the act of charging this person with criminal responsibility. In this case it is sufficient to send a summons or decree calling for the person to appear before the investigator, in order that this person be formally charged. It is extremely important for the accused that he be presented charges with a formulation of the charges and the legal qualification of the act committed so that the causes for the charges be brought out, that is, that the evidence be indicated on which the charges are based. Therefore the law[18] provides a hard and fast rule according to which the organs which have made the arrest or detention are obligated within 24-hours after the detention or arrest to question the person arrested or detained and to free this person immediately if there are no grounds for the arrest or detention. These regulations in the CPR, with no code of criminal procedure, are subject to ex-

tensive interpretation, according to which it is established that after a person has been accused, with or without arrest, formal charges must be brought within 24-hours. In the organ of state security, besides the arrest order, the accused, being under guard, is presented with a special document which contains the charges against him in the process of investigation, after the questioning of the accused upon arrest. This document is drawn up by the investigator, as a rule, when he possesses enough evidence to make it possible for him to formulate charges clearly and concretely. After the presentation of written charges the investigator once again questions the accused on all points of the charges. Until these written charges are presented the questioning does not bear such a concrete nature in respect to each section of the indictment, while the accused is questioned about the crime in general and he is informed of certain evidence which testify to the fact that the investigator is informed on the crime.

If the person was not arrested, he is questioned upon appearing before the investigator, and at the beginning of the interrogation the investigator informs the accused of the crime for which he is charged and the basic evidence possessed by the investigator. After the presentation of charges and before the interrogation, the investigator obtains the signature of the accused on appearing in court. In all investigative organs, at the beginning of the interrogation, the investigators explain to the accused that confession of guilt and disclosure of all facts pertaining to the crime provide circumstances which mitigate the guilt. "This means that, with the exception of hardened revolutionaries who are conducting subversive activities or who have committed serious crimes in the past, whom the people hate, who stubbornly refuse to confess and who should be prosecuted as formerly to the full extent of the law, all persons confessing and showing repentance, independent of whether they have committed crimes in the past or engaged in subversive activities at present, can as a rule count on clemency when their case is tried."19

Viewing the testimony of the accused as a means of his defense and at the same time as a source of evidence, criminal procedure in China does not provide for warning the accused against perjury and refusal to testify. The interrogation is conducted in such a manner that a complete and clear picture be obtained of the facts bearing on the case. It is forbidden to use coercion in order to force the accused to give testimony or confess his guilt. As early as 1943 in Yenan the

Central Committee of the CPC and Comrade Mao Tse-tung proclaimed the famous "nine directives," including the necessity to eliminate coercion in giving testimony and to take testimony at its face value. Speaking at the Eighth All-Chinese Congress of the CPC, Minister of Public Security Lo Jui-ching stressed that the use of any coercion on the accused "is a subjective, anti-Marxist method, which will definitely lead to an increase in the forces of the enemy."[20] At the same time Lo Jui-ching indicated that beginning with the Second Civil Revolutionary war the CPC was accenting the intention of investigative organs and the court on the inadmissibility of using any measures of coercion against the defendant.[21]

In criminal procedure in the CPR the testimony of the accused did not prevail over all material in the case and is not considered to be "the king of evidence"; each testimony by the accused must be carefully verified and backed by other evidence.[22] During the course of preliminary inquiry the content, nature and qualification of the indictment can change. In all these cases the charges are not presented anew, but the accused is interrogated by the investigator if this is necessary in order to clarify or pin down any circumstances of the changed situation. After the investigation the investigator draws up a document which indicates the new, final form of the indictment. Upon acquainting himself with all the materials of the case and the new formulation of the indictment the accused has the right to present a petition and express his wishes on the case. Thus even during this period of inquiry the right of the accused to defend himself is maintained.

An exception from this general rule are cases whereby the investigation establishes that the accused has committed a new crime unknown to the investigators, or that the necessity has arisen to investigate more than one act. In such cases the accused is presented with a new indictment and he is interrogated on the contents of this indictment. Criminal procedure in China proceeds in such cases from the point that the rights of the accused are being infringed if he is kept in ignorance of the fact that the indictment against him, originally containing, for example, one specific crime, has altered substantially and several other acts or proceedings have been instituted by another investigative organ. Chinese criminal procedure thoroughly adheres to democratic principles in relation to all those involved in the case, including the accused, placing him as one of the parties and granting him special rights.

The accused in a criminal action is not the object of the arbitrary will of investigative organs, but the subject of legal rights, for the maintenance of which laws of the people's democratic state stand.

The legal position of the accused is complicated. He is at the same time the subject of rights, the source of evidence and a possible object of punishment. Proceeding from this position, legislation and practice grants the accused broad rights and established limits which can be used in respect to the accused for successful investigation of a crime. Certain measures of legal compulsion may be used against the accused. The use of these measures is accompanied by observance of the rules guaranteeing the rights and lawful interests of the accused. These rules substantiate the necessity of measures which limit the use of steps within a definite framework and period of time in establishing a definite order of application.

The basic right of the accused is the right of defense in the broad sense of the word, whereby defense includes everything that opposes the indictment, refuting it or weakening it. The right of defense in this sense is granted to the accused from that moment when he is presented with formal charges.[23] In order to successfully implement his rights of defense the accused must know his rights. Therefore the investigator, in questioning the accused at the time of the formal charges, explains the rights of the accused. The accused has the right of objective investigation. This means that the organs of investigation during the process of investigation of the case must collect evidence independent of whether the evidence is for or against the accused. The accused has the right to participate in the preliminary investigation, in particular, to give explanations, testimony, petition, challenge the investigator, appeal the actions of the investigative organs, participate in investigations by experts, become acquainted with the trial materials after the investigation has been completed. If the accused, upon becoming acquainted with the materials of the case, upon completion of investigation, enters any well-founded petition for supplementary investigation, the investigator is obligated to continue the investigation and verify the facts indicated by the accused. If these petitions, in the opinion of the investigator, are not well grounded and intended to delay the process, the investigator has the right to refuse to conduct supplementary investigations.

In the statement acquainting the accused with the materials of the investigation, the investigator of the

people's procurator's office must show cause why he had rejected the petition of the accused. In the organs of public safety, upon rejecting petitions of the accused, the investigator draws up his comments on the petitions and adds them to the record acquainting the accused with the materials of the case, where the petitions had been entered. The accused has the right to acquaint himself with the formal indictment in order to inform the court even before the trial begins on evidence which, in his opinion, must be verified at the inquest. In order to furnish the accused with sufficient time to acquaint himself with the formal indictment and in order to assure the rights of defense, it is provided that the court summons, a copy of the formal indictment and determination by the preparatory session on binding over for trial be handed personally to the accused no later than three days before the court hearing begins. From the moment when the accused receives the court summons, a copy of the bill of indictment and determination for bringing to trial, he becomes a defendant, that is a decision has been made to bring him to trial. The term "accused" is broader than the term "defendant." Every defendant is an accused, but not every accused is a defendant. Only those who have been brought to trial are defendants.[24] After the determination of the preparatory session to bring to trial, upon handing the accused the above documents, he is explained his rights during the court-room session and from this moment the accused has the right to enlist the aid of counsel. The accused, being in custody, receives this communication by means of the administration of the place of imprisonment, and if the accused is at liberty--the secretary of the people's court or the militia functionary delivering the documents. An explanation of the rights of the accused before the trial makes it possible for the accused to formulate petitions which he might later raise before the court, and he can secure the aid of counsel and work out his defense. This is a real implementation of the rights of the accused. The position of the accused before the court differs substantially from his position at the preliminary inquest. The participation of the defendant in the trial gives him new and supplementary possibilities to defend his rights and lawful interests. In court the accused is a party to the case and he participates in the judicial investigation, in the examination and verification of each piece of evidence. During the preliminary investigation stage the accused usually does not participate and is not even present at the establishment and consolidation of evidence in the case.

The accused acquaints himself with all materials after the completion of the preliminary examination.

The legal rights of the defendant are implemented more fully in the trial phase. Chinese criminal process secures an actual implementation of rights bestowed on the accused and necessary for attaining the goals placed before socialist justice. A real guarantee of the implementation of the rights of the accused for defense during the trial stage is the right to turn over the defense of his case to counsel. The use of counsel is not a formally enunciated norm but a right actually enjoyed by the accused. If the accused does not have the aid of counsel in cases where he must, the acting chairman must appoint counsel for him or allow a defense counsel to participate, for whom the defendant or person who is conducting the defense has petitioned.

Before the beginning of the judicial examination the acting chairman must explain to the accused his rights in a form understandable to him, in order that the accused may make full use of his rights of defense. After this the accused has the right to challenge both the court as a whole as well as an individual judge, as well as the procurator, the secretary of the court session and the interpreter. This right of the accused assures a more unprejudiced and objective trial. Directly participating in the trial (criminal procedure in the CPR does not allow a case to be heard in the absence of the defendant) the accused at the same time participates in questioning witnesses, experts and other defendants; in judicial examination; in all actions taking place during this stage, which make it possible for the defendant not only directly to receive evidence, but actively to participate in the establishment of new justifying circumstances in the refutation of evidence upon which the indictment is based. The accused participates in the debate if he is not making use of counsel and, finally, has the last word before the court meets to pass sentence.

The presentation of such broad rights to the defendant actually insures his active participation in the trial. All rights granted to the accused are to be enjoyed by him fully, independent of whether he is aided by counsel. It is necessary to note and stress the principle of equality before the court of both sides in the case. This equality is expressed fully and thoroughly in Chinese criminal procedure. Individual cases of violating this principle cause review of the case by an appeal court or within the framework of the supervision system. Chinese criminal procedure creates the conditions

for the active participation of the accused and for his defense at definite stages of the process. Practice has dictated a situation whereby neither the investigator nor the court can require the accused to prove his innocence of the charges, just as these organs cannot consider the charges to have been proved only because the accused has not proved his innocence. A guarantee of the correct examination of a case in court is the obligation of the court objectively to collect and examine evidence both for the indictment and for the accused. The participation of the defendant in the trial and the implementation of his lawful rights do not cease with the passing of sentence. After the passing of sentence the defendant or his counsel, or both, have the right to verify whether the record of the trial is correct. Upon establishing inaccuracies in the court record, as well as distortions and omissions, they can petition before the chairman of the court to alter the record. An inherent right of the defendant before the sentence becomes valid is the right to appeal the sentence to a higher court and the right to participate personally in this stage of the process. The council for the defense can participate in review of the case by the appeal court.

During the review of the case by the appeal court the accused also is one side to the case, possessing the right to challenge judges of the second instance, the right to speak before the court and present new evidence or petitions. In cases when the court of the second instance reviews the case along with a judicial investigation, the accused has all the rights he had in the courts of the first instance. Finally, after the sentence has become valid the convicted person has the right to petition the court or procurator to review the case in the judicial supervision system, but without his personal participation at this stage of the process. These are the guarantees given the accused in Chinese people's democratic criminal procedure.

4. Measures of Legal Compulsion

Criminal procedure in the CPR is set up in such a manner as to guarantee the rights of the individual to a maximum. The Constitution (Articles 89, 90) guarantees the inviolability of the individual, home and confidential correspondence. These guarantees are attained by giving the accused broad rights by means of which he can refute the indictment. However, the task of uncovering crime and the punishment of the guilty party demands in certain cases the use of measures of legal compulsion,

which are not means of punishment but are used for suppressing attempts by the accused to hinder the carrying out of justice. Measures of legal compulsion are used in order to stop the criminal from flight, to stop him from avoiding investigation and trial, from destroying material and other evidence, from falsifying evidence, from committing another crime, and, finally, in order that the accused does not commit suicide.

We should note that measures of legal compulsion present a right and not an obligation for the organs of the procurator's office, investigation and the court. Measures of legal compulsion are applied not to all accused, and if they are accused, depending on certain conditions: the degree of public danger of the crime; the weight of evidence; the amount of damage caused; the condition of health of the accused, his profession, public opinion. Since measures of legal compulsion substantially affect the rights and interests of citizens, cases of application of these measures are carefully regulated in legislation and practice. This is a method which maximally guarantees the interests of the person and at the same time the interests of justice.

The correct application of measures of legal compulsion is assured by the strict supervision by the people's procurator's office over the organs of investigation and the court. In the struggle against counter-revolution the people's procurator's offices of all levels actively worked on control and approval of the arrest of criminals and for the institution of criminal proceedings in court, made early arrests of counter-revolutionists and other criminal elements, instituted criminal proceedings on the basis of law, and turned over cases for court trial. By means of supervising court trials the organs of the procurator's office prevented and corrected several mistaken arrests and erroneous cases and guarded the democratic rights of the people.[25]

In the theory and practice of Chinese criminal procedure measures of legal compulsion in the broad and narrow sense are distinguished. In the broad sense of the term measures of compulsion mean the actions of investigative organs which limit the rights and interests of [illegible] persons involved in a case in any way. These actions include arrest, detention, house arrest, cognizance, compulsory appearance at court, property confiscation, search and seizure. Measures of legal compulsion in the narrow sense of the word include measures assuring the appearance of the accused before the organs of investigation and the court. This section of the work will deal with these measures of legal compulsion, since these measures, un-

derstood in the broad sense of the word, comprise investigative actions for establishing evidence or implementing possible civil action or confiscation of property. The law bestows the right to the organs of the court, the procurator's office and organs of investigation to apply the following measures of legal compulsion under definite conditions: 1) arrest; 2) cognizance for appearance for questioning upon the summons of the investigator or the court; 3) house arrest; 4) detention. Arrest is the most severe measure of legal compulsion, and therefore the Constitution of the CPR (Article 89) furnishes hard and fast rules which must be observed in taking an accused into custody: "Freedom of the individual in the CPR is inviolable. No citizens can be subjected to arrest except by the decision of a people's court or with the sanction of the people's procurator's office." Violation of this constitutional provision brings with it criminal responsibility: "In respect to persons responsible for the unlawful arrest or detention of citizens, the people's procurator's office shall conduct an investigation; if these unlawful acts were committed out of a desire for vengeance or with the intention of inflicting harm, or with the aim of personal gain, as well as other personal motives, the guilty parties shall be held criminally responsible."[26]

As has been indicated, in taking measures of suppression, certain circumstances must be considered which make it possible to determine what measure of suppression must be taken in respect to a given lawbreaker. For example, in choosing to take a person into custody the order which determines this measure must proceed from whether the arrest of the accused is for counter-revolutionary crimes or for crimes which are punishable by the death penalty or imprisonment.[27] In a speech at the Eighth All-Chinese Congress of the CPC, Minister of Public Security of the CPR, Lo Jui-ching, stressed that measures of legal compulsion, particularly arrest, should not be used identically for all persons accused of crimes, that in applying these measures it is necessary to proceed from the concrete historical circumstances, the policy of the Party and the government, and the person of the accused. "The establishment of rigid control over arrest and executions of counter-revolutionary elements," he said, "was a measure of decisive significance. The CC of the Party has always insisted on a circumspect approach to the arrest of counter-revolutionary elements . . . in 1951, during the high tide of the first movement for suppressing counter-revolution, it was decided not to arrest counter-revolutionaries who could be left at liberty--the

arrest of such persons was considered to be a mistake . . . "[28]

The humaneness of the people's democratic state is expressed in the fact that in respect to seriously ill persons accused of crimes, women in the final stages of pregnancy and nursing mothers, arrest can be replaced by watch over the place of residence or by cognizance.[29] A substantial guarantee of the rights of the accused is the system of arrest, which eliminates its unlawful application. Arrest is possible only on the basis of a decision by the people's court or with the sanction of the people's procurator's office. With an affirmative decision by the people's court or the sanction of the people's procurator's office, the arrest is made by the people's court, the people's procurator's office or organs of public security. The people's procurator's office gives sanction for the arrest to the organs of public security.[30] A decision by the court to arrest a person accused of a crime is signed by the chairman of the court, and the decision of the people's procurator's office to arrest a person is signed by the chief procurator of the given people's procurator's office. In order to receive the sanction for arrest, the investigator of the people's procurator's office or organ of public security draws up a paper showing cause which, together with the materials of the case, is transmitted to the procurator for perusal.[31]

The main task of the procurator in checking matters with the purpose of receiving sanction for arrest is an examination of the correctness and sufficiency of evidence of crime. Without a clear presentation of the crime committed and its perpetrator, the procurator does not resolve the question of arrest. In case of receiving insufficient material or materials which contain no foundation for basing the responsibility of the accused, the procurator returns the case to the investigator for a supplementary collection of evidence and, at the same time, refuses to sanction the arrest.[32] In order to arrest a person it is necessary to have a warrant for the arrest issued by the people's court, the procurator's office or an organ of public security, made out after the passing of the decision to make the arrest or the receipt of the sanction. The warrant for arrest is presented or read to the accused during the arrest. After the arrest the organ which is carrying out this action informs the family of the arrested person of the reasons for the arrest and the place of confinement of the prisoner, with the exception of cases whereby this might influence the course of preliminary

investigation or where such notification is impossible.[33] If persons being placed under arrest offer resistance, those persons making the arrest have the right to use suitable measures of coercion, and if necessary--weapons.[34] A guarantee for citizens against unlawful arrest and confinement are the rules in Article 11 of the Regulations on Arrests and Detentions in the CPR. According to these Regulations organs which make an arrest are required to question the prisoner within 24 hours following the arrest. If it is established that there is no basis for the arrest, the prisoner must be released immediately. Article 42 of the Regulations on Labor Re-education in the CPR provides that in cases whereby the legal period of imprisonment for persons whose cases have not yet been decided has passed, and the investigation or trial has not yet been completed, the jail where the prisoner is held previous to trial must inform the organ which sent the prisoner to this jail of this fact with the aim of coming to a rapid decision. These instructions present a certain guarantee of observing proper periods of pre-trial imprisonment. When comparatively insignificant crimes have been committed, the arrested person can be freed on cognizance. Custody as a means of suppression is allowed only after the arrest and interrogation of the accused. The period of time during which the accused is in custody before sentence is passed is included in the sentence handed down by the court. Persons who have been arrested as a means of suppression and whose case has not yet received sentence are kept in areas of preliminary confinement where, if this does not hinder the conduction of the investigation and the trial, they are put to work.[35]

A medical examination of the accused must be made upon placing the accused in custody. Custody is forbidden (with the exception of persons having committed serious counter-revolutionary and other major crimes) under the following conditions: 1) if the accused is mentally ill or has a highly infectious disease; 2) if the accused is seriously ill and imprisonment would be dangerous for the prisoner; 3) if the prisoner is pregnant and if a period of 6 months has not passed since childbirth.

Persons in the above categories should be, depending on concrete circumstances, placed by the organs under which they are in custody in a hospital or put under care, or placed in other suitable facilities.[36] Besides the fact that the procurator's office sanctions arrest or refuses to do so, in turning over a case to the people's court it verifies the correctness and advisability of keeping a given person under custody and only after this can the case proceed to the people's court.

The effectiveness of work in verifying and ratifying arrest is well grounded only if the quality of investigation is high, for the work of the procurator's office in verifying and ratifying arrest is inseparable from the work on increasing supervision over the investigation. The activities of the procurators in this field cannot be carried out without a connection with the investigation. Only under the condition of such contact do these activities insure the lawful prosecution of criminals, the preservation of the interests of the state and the people, as well as the successful development of socialist construction.[37]

Depending on the concrete conditions and the person of the accused, the organs of investigation, the court and the procurator's office can replace jailing with a milder means of suppression. In particular, persons who have come forth with a voluntary admission of guilt and those who have confessed to their crimes can be allowed to remain out of custody. Another and milder method of suppression can be chosen for them. A special system has been established for arresting deputies of the All-Chinese Assembly and local assemblies of people's representatives. This system guarantees the inviolability of deputies--the elected representatives of the people.[38]

A deputy of the All-Chinese Assembly of People's Representatives cannot be arrested without the permission of the All-Chinese Assembly of People's Representatives, and during the period between sessions--without the permission of the Permanent Committee of the All-Chinese Assembly of People's Representatives. Deputies of local assemblies cannot be arrested during the period of the sessions of the Local Assemblies of People's Representatives without the consent of the Presidium of Assembly of People's Representatives.

Cognizance. Criminal procedure in China makes use of personal cognizance as well as property cognizance or bail, cognizance by a state institution, social organization, enterprise, peasant household or family, that is six types of cognizance. At present the most common form is personal cognizance, and in certain cases--property cognizance or bail. The remaining forms of cognizance have not been used in recent times for various reasons. Cognizance by a private concern has not been used for the simple reason that there are almost no private concerns in the CPR. Cognizance as a measure of legal compulsion is applied to persons having committed crimes which are not particularly serious, who are in a condition of serious illness, demanding medical care outside prison, when the accused has neither the opportunity nor intention to com-

mit suicide, murder or inflict bodily harm to someone, and when he has no permanent residence. Cognizance is also used for women in the last months of their pregnancy or nursing mothers. Property cognizance or bail is used only in cases where it is impossible to apply personal cognizance. The property which has been put up for bail can belong to the accused or to another person.

When the investigator decides to apply cognizance to an accused, he makes up an order for this and requests the accused to select persons to take him on cognizance. After the consent of the investigator to the proposed candidate, the persons chosen sign a cognizance deed and the investigator explains to them their obligations and responsibility in case of violation of the accused of the demands of the investigative organs.

In practice the responsibility of the persons assuming cognizance is as follows: If the accused violates the rules stipulated in the deed, the investigator requires the guarantor to deliver the accused. If the guarantor cannot do this and it is established that he has premeditatedly and consciously aided the escape of the accused, the guarantor is made criminally responsible. Under property cognizance or bail, the property or money which has been designated reverts to the state if it is established that the guarantor has aided the escape of the accused. The property or money also goes to the state if they belonged to the accused who had run away.

House arrest means that the accused is required to live at the place of his permanent residence or at another stipulated place, known to the organ carrying out the decision on the measures of compulsion. House arrest can be carried out with or without guards. House arrest is used for persons who might contact witnesses and other persons accused of the same crime with the aim of falsifying evidence, plotting, etc., as well as those who have valid reasons for substituting arrest by house arrest (for example, poor health of the accused, those who have committed crimes of a non-serious nature, last months of pregnancy, nursing newly born children). The decision of the investigator to apply house arrest is ratified by the procurator if it is carried out by the investigator of the procurator's office, or by the chief of the organ of public security if the decision is carried out by an investigator from these organs. The investigator thereupon informs the institution or enterprise where the accused works of the necessity of executing the enactment. If the accused does not work, the communication is made to the office of public security at the place of residence

of the accused.

Detention differs from arrest by the fact that arrest can be applied only to a person after he is formally charged with criminal responsibility. A person can be detained who is suspected of committing a crime, before charges are preferred. Arrest takes place only on the basis of a decision of the court or the sanction of the procurator, while detention can be carried out without a decision of the court or sanction of the procurator, by organs of public security. In addition, detention can be carried out by private citizens. Detention is an emergency measure and is permitted in cases strictly regulated by law, when organs of public security must take emergency measures of detention for conducting preliminary investigation (Article 5 of the Regulations on Arrests and Detentions). A person is detained: 1) during the direct preparation for or commission of a crime, or immediately after its discovery;2) when the victim or witnesses point out the given person as the one who committed the crime; 3) when traces of the crime are found on the person suspected, near him or in his lodgings; 4) upon escape or attempted escape; 5) if the detained person is able to destroy or falsify material evidence or might be able to arrange for corroborating testimony at the hearing; 6) when the identity of a suspect has not been established and if he has no permanent place of residence.

In accordance with Article 6 of the Regulations on Arrests and Detentions each citizen has the right to detain forcibly and turn over a criminal to organs of public security, the people's procurator's office or people's court in order to decide his fate in the following cases: 1) during the commission of a crime or immediately after its discovery; 2) when search for a criminal has been announced; 3) upon escape from prison; 4) during prosecution. If the person detained offers resistance, those persons detaining the suspect have the right to use suitable measures of coercion, including weapons if necessary.

The grounds for the detention of citizens as indicated in Articles 5 and 6 of the Regulations on Arrests and Detentions are exhaustive and need no expanded interpretation. In case of detention at the spot where crime is committed by a deputy of the All-Chinese Assembly of People's Representatives, the organs detaining him must immediately ask the consent of the All-Chinese Assembly of People's Representatives or the Permanent Committee of the All-Chinese Assembly of People's Representatives

for the detention.[39] In detaining a deputy of a local assembly of people's representatives on the spot where a crime was committed the organ detaining the deputy must immediately ask the consent of the Presidium of the Local Assembly of People's representatives.[40] Organs which have carried out the detention must within 24-hours question the prisoner and, if there is a lack of grounds for detaining him, they must immediately free the prisoner. In cases of relatively insignifican crimes the person detained can be released on cognizance.[41] If organs of public security, as a result of interrogation, establish the necessity of arresting the person detained, they must within 24-hours after the detention present the people's procurator's office of the same level materials on the case and grounds for the detention. The people's procurator's office, within 48-hours after receiving the materials, must sanction the arrest or refuse to sanction it. After receiving the decision of the people's procurator's office the organs of public security must immediately free the person, the arrest of whom has not been sanctioned.

In case organs of public security or the people's procurator's office do not carry out the above indicated demands, the prisoner or his relatives have the right to petition the organs of public security or the people's procurator's office to comply with these demands.[42] If the detention was unlawful or if the demands of the law were not fulfilled as to receiving sanction for the arrest, the organs of the people's procurator's office shall conduct an investigation of those persons responsible for the unlawful detention of citizens. The guilty parties shall be held criminally responsible if these unlawful acts were committed out of desire for vengeance, with the intention of causing harm, with the purpose of personal gain or other personal grounds.[43] The rules on detention do not pertain to cases whereby the organs of public security detain persons for violating the social order, that is, for administrative violations.

5. Investigative Acts

After instituting criminal proceedings the investigator receives broad rights for conducting various investigative acts which are necessary for deciding the question as to whether the case is to be put to trial or dropped. The carrying out of certain investigative acts is regulated by law (for example, search, seizure); but independent of whether these acts are carried out on the basis of law or

established practice, all investigative acts are carried out in accordance with the regulations of the Constitution on the equality of all citizens before the law, on the freedom of the person of citizens, inviolability of the home and confidential correspondence.[44] The violation of the rights of citizens, which are guaranteed by the Constitution in carrying out investigative acts, is prosecuted by law: persons guilty of violations are held criminally responsible.[45] Carrying out the demands of the Constitution in conducting investigations is assured by suitable selection of investigative and procurator's office cadres from persons with good practical and political training and dedicated to the people.

But in investigating crimes, exposing criminals and carrying out various measures for combatting crime, the success of the operations of the investigative organ depends not only on the work of the investigators and procurators, but primarily on the aid and participation of the broad masses. Without the support of the masses the operations of the procurators and investigative organs cannot be successful. "The special organs should be supported by the broad masses, and they should attract the masses," Lo Jui-ching said. "They should form the backbone in the struggle of the masses. Only if the operations of the special organs are combined with the struggle of the masses will it be possible to eliminate the numerous counter-revolutionaries which remain and destroy even the most clever enemy."[46]

The worker masses are interested in the strict observance of people's democratic laws, which express their basic interests. As a result of the great education work conducted by party, state and social organs, the masses are participating more and more actively in the consolidation of legality and the maintenance of the social order. Investigative and procurator's office organs, in conducting investigations on criminal cases, must be supported by the masses, draw them into the struggle against crime, and they must not alienate themselves from the masses and conduct their work in a secret manner. Minister of Public Security Lo Jui-ching, in his speech at the Eighth All-Chinese Congress of the CPC sharply criticized those employees of the organs of public security who conducted their operations in liquidating crime in the country isolated from the masses, working in a secretive manner. Lo Jui-ching characterized these methods of combatting crime as vestiges remaining from the reactionary ruling classes.[47] Declarations by private citizens on crimes committed, detention and delivery to militia organs of

criminals, aid in catching criminals, guarding the scene of the crime, appearance of witnesses to crime, etc., are forms of aid rendered by the public in exposing crimes and punishing the guilty. Based on the support of the masses the investigator must take all measures required from him to expose the crime and catch the criminal by carrying out various investigative acts which are based on the knowledge of special sciences. All investigative acts are, as a rule, carried out by the investigator directly, but if the necessity arises to carry out any operations outside the territory of the investigation sector, the investigator may assign this to another investigative organ or the court by addressing a specific request.

The system of procedural forms and methods of carrying out all investigative operations in criminal procedure in the CPR are aimed at guarding the rights of the individual and the interests of the investigation for the purpose of the subsequent ascertation of the truth in the sentence by the people's court, if the materials of the preliminary investigation make it possible for the investigator and procurator to decide that the case should be brought to trial. Investigative operations make it possible for the investigator to collect evidence both justifying the accused as well as implicating him in the crime.

Planning the Investigation

A correctly organized investigation must be carried out in strict accordance with the principles of people's democratic criminal procedure, with the use of data provided by the natural and other sciences adapted to the purposes of investigation. The principles of dialectical materialism form the basis for a scientific investigation. Methods used in the process of investigation should fully correspond to the situation, conditions and circumstances of each concrete crime. In order to achieve the best results in investigation, greater effectiveness and rapidity of investigation, planning of investigation has been introduced into Chinese criminal procedure. This is carried out for each concrete case being handled by the investigator as well as planning of investigation for all cases which are simultaneously being investigated. "The drawing up of a plan of investigation is an important method of developing the habit of planned operations."[48] Planned investigation is extremely significant. The success of the entire investigation depends on the planning of the investigation, the specific investigative opera-

tions, the orderliness and timeliness. The basic task of investigative planning consists in correctly determining the direction of investigation, according to the concrete materials of the case, proceeding from its peculiarities. The most important questions which need verification should be determined. The nature of the investigative operations should be determined, with the aid of which it will be possible to verify all questions. A sequence should be established for carrying out investigation operations and a time schedule should be determined. The planning of investigation assures the effective direction of the investigation by the procurator, who is following the investigation, and makes it possible for him to turn the investigation in the right direction.

The plan of investigation in Chinese criminal procedure is not something rigid which must be followed once it has been established. New facts may be uncovered during the course of investigation. The plan is supplemented during the course of investigation and changes in accordance with the results of investigation, but only the plan gives a guarantee to the investigator that nothing substantial will be overlooked, that he will not spend all his time on matters of secondary importance and will be able to conduct his operations in a succession which will assure the best effect of these operations. The time of drawing up the plan has great significance. An ill-timed drawing up of the plan may lead to a situation whereby the investigator, not yet well acquainted with several important circumstances of the case, will incorrectly determine the path of investigation and due to this will not carry out in a timely manner important investigative operations. If the plan is drawn up too late it is possible that important operations will not be carried out in time, and consequently, certain evidence might disappear and it will be more difficult to expose and capture the criminal. Attaching great significance to the time for drawing up the plan of investigation for a concrete case, criminal procedure in the CPR stipulates that the investigator must draw up the plan immediately after the procurator has ratified the declaration on the institution of criminal proceedings or upon receiving instructions from a procurator to carry out an investigation on a case opened by another investigative organ (for example, if a case comes to the procurator's office from organs of public security, or from another procurator's office, or is returned from the people's court for supplementary investigation).[49] The plan of investigation is drawn up in such a manner that sufficient materials will be collected for each case to form a basis for the investigator and proc-

urator to decide whether the case should be continued or dropped. In drawing up the plan the investigator proceeds from the concrete circumstances of the case, a correct comprehension of the peculiarities of the specific case and the nature of the investigation to be undertaken. He takes into consideration the possibilities, the time during which the investigation must be carried out, as well as possible difficulties he may meet during the investigation and methods of overcoming them. In drawing up the plan the investigator determines the main guide lines of the investigation and the main version of the specific case, not seizing upon many versions at once, and conducting parallel verification. An approximate diagram of a plan, taken as a result of the generalization of the experience of investigators in drawing up plans, breaks down to the following: 1) a concise outline of the case and the version which is to be verified; 2) the order of conducting the investigation, that is, an indication of the questions which must be checked; 3) determination of the period for verifying the questions, and the stages of investigation in general; 4) the investigative operations and the periods for carrying them out; 5) generalizing results of fulfilling the plan, chiefly self-verification with the aim of bringing out shortcomings in the planning and fulfilling of the plan.

In drawing up the plan the investigator coordinates it with the chief procurator of a given people's procurator's office (in organs of public security--with the chief of the organ) after which the investigation begins. In the process of investigation, as has been indicated above, the investigator on his own initiative or on the instructions of the procurator who is following the investigation, introduces suitable changes in the plan, which are called for by the course of investigation. During the course of investigation the investigator, carrying out complicated investigative operations, draws up in addition a plan for carrying them out. In following this plan, the investigator, depending on the specific circumstances of the case, carries out the following investigation operation.

Inspections. Inspection of the scene of the crime in Chinese criminal procedure is viewed as the initial investigative operation and is undertaken with several purposes in mind. In the first place, the purpose of the inspection is the discovery of the criminal or at least a determination of a group of persons, among whom he can be found. In the second place, the circumstances of the crime are studied, in order to more accurately understand the crime which has been committed and the interconnection

between the actions of the criminal and his intentions. In the third place, the purpose of inspection consists in discovering, collecting and preserving material evidence and traces of the crime. In inspecting the scene of the crime the necessity always arises of finding, collecting and preserving clues pertaining to the crime and material evidence for a subsequent examination by experts. This purpose is served by the investigation sack and the investigation case, created by the Shanghai Institute of Forensic Medicine Expert Examination, which are given to the operatives of the technical examination section of the criminal investigation division of the Ministry of Public Security. These operatives participate in the inspection. At present an inspection usually takes place in the presence of witnesses by persons from organs of public security and a representative of the procurator's office (investigator or procurator), who is heading the inspection. In necessary cases, usually in inspecting the scenes of crimes such as murder, robbery with breaking and entry, arson, etc., experts are called in to participate. The scene of the crime is guarded by the organs of public security until the arrival of operatives. Persons from organs of public security can carry out certain essential acts during the inspection under the direction of the investigator. The inspection is conducted in the order of the location of objects to be inspected; everything is inspected in the same sequence as each individual object meets the eyes of the persons conducting the inspection. In murder cases with the participation of a forensic medical expert, a preliminary superficial examination of the body is made on the spot, after which the body is sent for autopsy. The results of the inspection at the scene of the crime are entered in the records, a map is drawn up of the scene of the crime, which is photographed according to methods of operative photography. The forensic medical expert or physician called in to make the examination writes up a report on the inspection of the body. The report on the inspection of the scene of the crime and the report with the plan of investigation, plus all photographs, are signed by the persons conducting the inspection plus witnesses. If the investigator was not able to leave for the scene of the crime immediately to make an inspection, and, upon arriving at the spot, establishes that changes have taken place, he must still conduct the inspection. Where necessary material evidence and possible clues to the crime, after their seizure and fixation, are sent for expert examination to the crime laboratory of the criminal investigation division. All examinations of material emanating from the inspection of

a crime are usually conducted within 24-hours, with a maximum of 48-hours. The conclusions of the lab experts are presented together with a report on the inspection of the scene of the crime and other materials to the organ deciding whether criminal proceedings should be instituted. The technical examination section (crime lab) draws up a "special note book" on the case, which gives a complete picture of the inspection of the scene of the crime and includes a description of the operations of those persons who conducted the inspection, as well as the conclusions of the crime lab examinations. As an example, we can mention the "Inspection-Examination Notebook in the case of the death by unknown causes of Wen Ting-chen, residing in the city of Peking on Hsiangwei Street, drawn up on 29 April 1956 for number . . ."

In one of the houses of Hsiangwei Street in the city of Peking, on 28 April 1956 at 10 o'clock in the morning, a female body, that of Wen Ting-chen and that of her child were found. Immediately, upon receiving the information from the office of public security, an operative group from the Peking city section of Public Security arrived on the spot. This group included a forensic medical expert and an expert from the technical examination section. The inspection lasted three and a half hours. On 29 April 1956 the above mentioned notebook was drawn up which included: 1) a report on the inspection of the scene of the crime; 2) a map of the inspection of the scene of the crime; 3) a table of photographs of the scene of the crime; 4) a report on the examination and autopsy of the bodies; 5) two tables of photographs of the bodies; 6) a critical analysis of the contents of the stomachs of the bodies and materials found near the bodies; 7) a report on the dactiloscopy taken of fingerprints found at the scene of the crime; 8) a table of photographs illustrating the dactiloscopy, consisting of 18 photographs; 9) a graphic examination report; 10) a comparative table appended to the graphic examination report, illustrated by photographs.

In the case of the murder of Chang Chao-cheng, the "inspection-examination notebook of 14 January 1956" included the following: 1) report on the inspection of the scene of the crime; 2) a map of the scene of the crime in two sheets; 3) a table of photographs of the scene of the crime; 4) a report on the inspection and autopsy of the body; 5) a table of photographic illustrations for the report on the inspection and autopsy of the body; 6) a dactiloscopy report; 7) a ballistics report on two pistols, cartridge casings and slugs discovered at the

scene of the crime; 8) a table of photographs appended to the ballistics report. As a result of rapid and careful work in inspection materials are collected which make it possible to form a judgment on the spot where the crime took place, and in some cases, also on the persons who committed the crime. During the course of crime lab examination, autopsy of the bodies and other operations, the organs of public security as a rule carry out certain operations aimed at establishing the identify of the criminal. As a result of this the person who has committed the crime is often already known when the inspection-examination notebook is drawn up.

If the materials of the inspection of the scene of the crime are defective in any way, a secondary inspection can be made. In the case of the murder and robbery in the village of Hung-Shanssu near Shihlihe on 5 June 1956, the scene of the crime was inspected. As a result of this inspection the murder weapon was not found. On 6 June 1956 a second inspection was made. This time the murder weapon was found--an axe--and traces of blood indicating that the murderer had transported the body from the spot where the murder had taken place and thrown it into a well.

Examination of material evidence. The following objects are considered material evidence in a case: a) those objects which were the motive for the crime, b) objects serving as a tool or means of committing the crime, c) objects containing traces of the crime, d) objects aiding in uncovering the crime and identifying the guilty party. All material evidence included in a case is carefully examined by an investigator, after which a report is drawn up on the investigation, which must include the following: the material from which the object is composed; the form of the object; the dimensions; volume; weight; the color of the object; the component parts of the object and their correct inter-relation; peculiarities of the object; purpose or use of the object if it is vague or unclear. Material evidence is important for bringing out the method of the commission of a crime, and, in addition, it sometimes contains peculiar features which lead to the rapid disclosure of the person having committed the crime. This is achieved, in particular, by collating the tools of the crime which were left at the scene of the crime or removed by the criminals, with traces of the crime. In the majority of cases this question is resolved by means of expert analysis, for which the report of the examination of material evidence is extremely important, for this report certifies that this particular material evidence and no other formed part of the crime.

Examination is conducted with the aim of discovering clues on one's person. This investigative action is an inspection, but it differs from an inspection by the fact that the object of the examination is a person. Due to the differentiation of objects being inspected, a different procedural order is established for examination, which differs from inspection. The accused, a witness and the victim can be subjected to examination. If the person to be examined refuses to submit, but the investigator considers it essential, he gives an order for forced examination independent of who it is who is subjected to examination: the accused, the witness or victim. As a rule the examination is assigned by the investigator to a forensic medical expert institution and if there is no such institution in a given locality, to a medical healing institution. A rule has become solidified in practice according to which the investigator himself may conduct the investigation if the matter is not a complex one, for example, the determination of marks from a beating or wounds on the body of a person, marks and spots on clothing, etc. If the investigator cannot determine the nature of the injuries himself or cannot handle any other complex problem, he must call a specialist for examination. In the activities of the investigative organs there has not been one case whereby a complaint was lodged due to incorrect examination. If the person to be examined is not of the same sex as the investigator or physician, and if the examination requires the person being examined to disrobe, a physician of the same sex as the person being examined must be called in, and the investigator must receive the clearly expressed consent of this person for his presence during the examination. Otherwise the investigator does not have the right to remain present. If the investigator conducts the examination himself, he has the right to do this only for persons of the same sex. The results of the examination, irregardless of whether it was conducted by the investigator or a physician, are always included in the report by the investigator.

Investigative Experiment. After the inspection of the scene of the crime or questioning of witnesses and accused, certain important circumstances sometimes remain unexplained, for example, whether it was possible to see or hear from a specific spot that which was reported during the questioning by a witness or the accused. This lack of clarity arises from the fact that inspection cannot always provide an answer to all questions arising. Inspection is supplemented organically and merges with interrogation, particularly in cases where certain actions

are necessary to determine. This is chiefly the sphere of testimony by witnesses and explanations by the accused. But they, particularly the latter, can be inconsistent and even false, can differ from the material in the case gathered by conducting other investigative operations. In order to bring together both types of material, and in order to establish as much accuracy as possible for individual circumstances in the case, investigative experiment is conducted, which is extremely valuable in gaining information on the scene of the crime. Investigative experiment is the artificial re-enactment of some vague circumstance in the case, which cannot be determined by other investigative means. Such an experiment is conducted under conditions of the scene of the crime, under the direction of the investigator with the participation of the persons involved in any way in the crime (for example, victims, witnesses, accused), as well as witnesses to the re-enactment, and, if necessary, experts.

The variations of investigative experiments in the practice of the investigative organs in China are extremely numerous. This investigative operation is conducted chiefly for checking the testimony of witnesses and accused, as well as for obtaining new evidence. In order for the results of investigative experiments to give a satisfactory answer to a question, for the resolution of which the experiment was organized, investigative practice has established several requirements connected with preparing and conducting the experiment. These requirements include: a) a careful preliminary organization of the experiment; b) detailed questioning of the person, the testimony or explanation of whom must be checked, before the experiment; c) conduction of the experiment under conditions which as closely as possible correspond to those under which the event occurred which is being verified by the experiment; d) participation in the experiment by as many persons as possible who are involved in the case as witnesses or accused, as well as the use of those means, implements and in general all objects which were used in committing the crime; e) the inadmissibility of acts during the experiment which defame individuals, violate morals and threaten the safety of citizens.

Everything connected with conducting investigative experiments must be included in the special report, and maps, diagrams and photographs must be drawn up and noted in the report. The results of the experiment are to be stated in detail and accurately in the report, so that no doubt will arise in the future. In drawing up the report the investigator reads it to the persons having taken part in the experiment, and all participants of the experi-

ment sign the document. The report of the investigative experiment presents new evidence in the case, received with the participation of persons having a relationship to the crime.

Search and Seizure. Article 90 of the Constitution of the CPR proclaims the inviolability of the home of citizens and the safeguarding by law of the right of secret correspondence. However, in order to disclose instruments and clues to the crime, valuable objects stolen or acquired in a criminal fashion, as well as to expose persons hiding from the investigation, the law allows search and seizure. These acts infringe somewhat on the rights of the individual, but they are vitally necessary for exposing and punishing criminals. The law requires that a search be conducted only in case of actual necessity. The decision to make a search must be formulated in the following manner: "In order to conduct a search, with the exception of cases where delay cannot be allowed, it is necessary to have a search warrant, issued by the organ making the arrest or detention."[50] The seizure of postal-telegraph correspondence can take place only on the basis of a decision by the procurator's office or organ of public security. "If the organ making the arrest or detention considers it necessary to seize postal correspondence to the person arrested or detained, it informs the proper postal-telegraph institutions concerning this decision."[51]

Grounds for conducting search are furnished by the testimony of witnesses, information given by institutions and organizations and citizens concerning the presence at specified spots by specified persons of objects pertaining to the investigation, or criminals in hiding. In all cases of arrest or detention, the investigative organs conduct a body search and a search of the premises where the person is arrested or detained. In cases of necessity during arrest and detention seizure is made of objects discovered during the search or given up voluntarily. In these cases a special order for search or seizure is not necessary. The only basis for conducting these investigative operations is the arrest or detention of a person. Objects important for the investigation can be secretly kept or hidden from the organs of investigation, as well as persons having committed crimes, not only by accused or their accomplices, but by their relatives and friends. Therefore, Article 9 of the Regulations on Arrests and Detentions states clearly that search can be made not only in the quarters of the accused, but in those of other persons of whom there is basis to suspect they are concealing

the criminal or material evidence.

Private citizens, premises, open areas and belongings of an arrested or detained person can be subjected to search. A guarantee of the legality of the search is the requirement of the law for a search to be conducted in the presence of the person subject to search, or members of his family, his neighbors or other persons. As a rule a search must be conducted during the day, but in cases where delay cannot be allowed it can be conducted at any time of day or night. The officials arriving for the search state who they are and announce the purpose of their visit. The person subjected to the search is read the search warrant and informed of the personal authority of those making the search. After this a body search is made immediately, and it can be made only by a person of the same sex as the person being searched.[52] The person subjected to the search is requested to offer up voluntarily those things necessary for the case, however, voluntary surrender of objects did not require the investigator to give up the search.

The person conducting the search is granted broad rights. The person making the search has the right to seize objects forcibly which are material evidence, if these objects are not given up voluntarily, and he has the right to open forcibly locked premises and depositories. In conducting the search the investigator is obligated not to make public circumstances of the private life of the person subject to search, which have no relation to the case, which are discovered or determined during the search. During the body search of a person under arrest, at that moment when he is transferred to jail, illegal objects which are discovered are turned over to the people's court, which confiscates them. Objects which are not daily necessities are taken by the administration of the place of imprisonment and kept until the prisoner is freed. Upon discovering material which may aid the court and the investigation, they are transmitted to the proper judicial and investigative organs.[53]

After the search a report is drawn up which is an investigative document of great significance. It contains information on material evidence which has been disclosed and seized. Entries in the record of the search dealing with the disclosure of objects necessary for the case are a certification of the fact of the disclosure of these objects at the quarters of a given person. These entries in specified form testify where the objects were kept and by whom, and serve as a basis for applying the discovered objects to the case as material evidence. The

record of the search is a document proving that the search was conducted without any violations. The record is signed by neighbors or other persons present during the search, the person subject to search himself or members of his family, as well as persons conducting the search. If a person subject to search resorts to flight, or if members of his family flee;as well as in the case of their refusal to sign the record, a note of this is made in the record.[54] One copy of the record is handed to the person subjected to the search. Seizure is made chiefly for removal of documents and correspondence in institutions. In order to avoid deception on the part of private persons who have been ordered to give up a certain object, seizure takes place much more rarely for private citizens and is usually replaced by search. If persons who receive an order to give up objects, refuse to give them up or do not agree to the order, and their person and actions do not inspire confidence, and there is basis to suspect deception on their part, the investigator immediately goes from seizure to search. After the seizure, as after the search, a report is drawn up which is signed, besides those persons participating in the seizure, by the chairman of the institution or organization where the seizure took place, and he is given a list of those objects and materials seized which has been drawn up and signed by the investigator.

Examination by Experts. In cases where special knowledge of a science, art or trade are needed for resolving any questions having a bearing on a case, a commission of experts is formed of knowledgeable persons, who study the circumstances under consideration and come to a conclusion. In Chinese criminal procedure the following types of commissions of experts are most common: forensic medicine, judicial-accounting, psychiatric, handwriting and other types of writing, chemical, ballistics, technical. To enumerate all types of examinations by experts conducted by investigative and judicial organs would be impossible due to the multiplicity and variety of special knowledge necessary for conducting an examination by experts. Forensic medical and psychiatric examinations are conducted by forensic medical experts from the technical examination section of the criminal investigation division, the organs of public security, and forensic medical experts of people's courts of the various levels, as well as experts from the Shanghai Institute of Forensic Medicine. Various types of criminalogical and chemical examinations are conducted by experts from the technical examination section of the organs of public security and the Shanghai Institute of

Forensic Medicine. Otherwise examinations are conducted by specialists of one field of knowledge or another, who are called in in individual cases.

As a rule a physical person can be an expert, but in Chinese criminal procedure juridical persons can appear as experts. In the technical examination sections and the Shanghai Institute of Forensic Medicine individuals appear as experts, forming conclusions, and not institutions. If the expert is a scientific worker in one of these institutions, he represents only himself and bears responsibility for his conclusions in the case. But in individual cases when the investigator or the court assigns the examination by experts not to an expert institution, but to an institution where specialists of some branch of science of technology work, the conclusion of the examination can be given in the name of the institution.

The decision to conduct an examination by an expert depends in all cases on the investigator. The criterion for the necessity of conducting an examination by an expert is the importance of the questions to be answered for the case, the necessity of special knowledge for resolving these questions and the impossibility of resolving them in any other manner besides the aid of an expert; however, if the question can be resolved indisputably by means of other evidence or even if it can be resolved simpler and more rapidly with the aid of evidence, an examination by an expert is not made, since in this case it is completely superfluous, due to its inability to introduce anything new into clearing up the circumstances of the case. In deciding the question of the time for conducting the examination by an expert the investigator guides himself according to the following considerations: 1) where the objects to be examined change or suffer in some manner in case the examination is delayed for a certain period of time; 2) are the materials or objects available sufficiently complete and suitable for an examination; 3) is it possible to continue the investigation without possessing the results of examination by experts.

Not the expert but the investigator has the responsibility of collecting all necessary materials for the examination. Only in rare cases does the investigator need the aid of an expert, whom he can use for collecting materials for examination. But this is of the nature of aid and does not comprise an obligation for the expert to collect materials for the investigator. The aid of the expert consists chiefly in indicating to the investigator

exactly which materials and objects are necessary for the examination and where they can be obtained; the expert can aid in selecting the materials necessary for the examination from the materials collected by the investigator. In the selection of an expert the investigator should keep in mind that the expert must be enough of an authority in his specialty and be completely impartial in the case, without any connections whatsoever with the accused, his friends, etc. In certain cases the investigator appeals to the proper institution to appoint an expert, relying in such cases on the recommendation of this institution. The investigator formulates the questions which must be posed to the expert on the basis of a comprehensive and deep study by him of the materials collected for the examination, and proceeding from all circumstances known to him in the case and from already collected evidence. The content of the questions must always refer to the specialty of the expert, and, in addition, have a bearing on the circumstances of the case and the materials collected for it, without going beyond these limits. There should be an internal logical tie between the questions. Each question should have a rigidly determined content. In some cases, when special knowledge and particular accuracy is demanded for formulating questions, the investigator can call upon an expert for the formal editing of the question, whereby the expert can recommend that the investigator include or exclude certain questions or present them in another form, keeping or changing the contents.

Such an examination is initiated by a special order by the investigator to call an expert, and this order is ratified by the procurator, and in the organs of public security--by the chief of the organ. Before the examination the investigator explains to the expert his duty and obligations to the state and warns him that in the case of a false conclusion he will be held criminally responsible. Before the examination the investigator is required to inform the accused of the examination by an expert to take place. The accused has the right to be present during the examination, to question the expert on points he considers necessary, to challenge the appointment of the expert and to request the appointment of another expert. In cases where the examination takes place before charges have been brought before an accused, the investigator, after formal charges have been brought against the accused, must inform him of the examination, explain his rights and acquaint him with the conclusion of the experts. . If the accused

presents a well-founded petition, it is necessary to conduct a new examination or conduct a supplementary examination.

The investigator is present during the conduction of the examination, guides the expert in his special study and presents problems to him; the expert aids the investigator in his operational work, drawing his attention to facts and materials which should be studied and analyzed. The expert gives his opinion (conclusion) in a report for expert examination document. The report of the examination is usually drawn up by the expert, while the examination document--by an expert for the institution. The conclusion should contain categorically positive or negative answers to the questions or refusal to form a conclusion on the grounds of impossibility of forming a conclusion. The expert has the right if he considers it necessary for the case, to include supplementary questions in his conclusion with the consent of the investigator and give answers to them on circumstances not covered during the questions posed by the investigator.

The conclusion of the expert is evaluated by the investigator according to its contents and from a viewpoint of the completeness of contents; if the report of the examination contains no distortions or errors, the report is signed by the expert and the investigator. If the expert himself cannot draw up the document, the investigator dictates a document, after which the document is read to the expert, who signs it, or an impression of the experts fingerprint is placed on the document. If several experts participate in the examination and one single document cannot be drawn up due to lack of agreement, each expert presents his conclusions separately.

Interrogation. Interrogation of the accused in Chinese criminal procedure is an extremely important phase in the investigation of the case. This investigative procedure pursues the aim of making it possible for the accused to give full explanation on the content of the formal charges and to obtain new evidence which can both incriminate and prove the innocence of the person being interrogated. Therefore, the significance of the testimony of the accused consists in the fact that in the first place, this testimony (personal explanation) is a type of evidence, and in the second place, this testimony is the explanation of the accused in reference to the charges brought against him and the means for his defense.

The accused does not only inform the investigator of known facts, but gives explanation for facts

which have been established by the investigation according to other sources. The confession of the accused can be complete, fully corresponding to all circumstances of the case, impartial, when the accused, although he confesses his guilt, does not communicate all the details of his criminal activities or attempts to explain and justify his actions and deeds, which does not correspond to actuality. Therefore the investigator never limits himself to the confession of the accused, but always brings out how and why the accused confessed.

The procedural significance of the confession of the accused of the crime committed by him, as the article "Correct Attitude Toward the Confession of the Accused" indicated, written by the head of the chair of criminal procedure of Peking Political-Juridical Institute, Chang Tse-pei, consisted in the fact that:[55] 1)confession contributes to the establishment of limits of investigation and collection of evidence, connected with facts of the crime; 2) in cases where the organs of public security and the procurator's office do not yet have sufficient material in the case, the confession of the accused can extend the framework of investigation, establish new facts of the crime and new criminals, lessen difficulties in combatting crime; in particular, confession has an important role in exposing counter-revolutionary organizations and accomplices in the crime; 3) confession by the accused aids the court, the procurator's office and the organs of public security in successfully handling the case, and 4) makes it possible to determine the degree of the of repentance of the accused and his moral qualities.

The arrest of the accused, the binding over for trial, establishment of the degree of punishment or exemption from punishment depends not only on the degree of public danger of the crime which was committed, but on the degree of correction of the criminal and his re-education. The great significance possessed by the confession of the accused and which makes the operations of the investigative organs much easier, does not indicate that the investigator should obtain the confession of the accused at any cost. Proceeding from the position that the confession of the accused is a means for his defense, Chinese criminal procedure during interrogation of the accused does not include the task of necessarily obtaining his confession. In the interrogation of accused and other persons, investigators of the CPR firmly hold to the instructions of Mao Tse-tung on the inadmissibility of using coercion to give testimony, and the application of punishment

and torture of the prisoner with the aim of obtaining confession.[56]

In Chinese criminal procedure the defendant possesses broad possibilities for giving testimony-explanations. His first explanation is given at the interrogation after the presentation of charges, and subsequently explanations are given on the substance of each new charge. The accused can be interrogated in cases where the investigation has revealed new evidence in the case, which demand explanation by the accused. In addition, the accused can give his explanations at the end of the investigation, when he has become acquainted with the entire investigation process. Interrogation of the accused takes place immediately after the presentation of charges. Article 11 of the Regulations on Arrests and Detentions provides that organs making the arrest or detention must question the person arrested or detained within 24 hours after detention or arrest. Before the interrogation of the accused, the investigator carefully studies the materials of the case and draws up a plan of interrogation in order to avoid repetition and confusion during the questioning. If the accused has become ill and cannot appear at the interrogation, and if interrogation subsequent to the prisoner's return to health might have a negative effect on the course of investigation, the investigator must question the accused at his home or hospital, if the condition of the health of the accused, in the opinion of the physician, will allow this. In case the accused does not appear on schedule, without valid reasons, the investigator can have the accused brought by force, whereby the order must be approved by the procurator. If there are several accused in a case, each of them is interrogated separately. At the beginning of the interrogation the investigator establishes the identity of the accused, after which he explains his rights to give testimony or refuse to give testimony, as well as the consequences of confession by the accused and sincere repentance. Then the investigator requests the accused to tell everything he considers necessary to add to the information of the investigation. After voluntary explanations by the accused, the investigator, in order to pinpoint certain unclear points and in order to bring out new facts not stated by the accused, has the right to question him. Depending on the circumstances of the case, the investigator can conduct the entire interrogation in the form of questions and answers. During the interrogation the investigators can present the accused with certain material and written evidence,

that is, indicate to the accused that his denial or false testimony will not bring the desired results, since the investigation already possesses evidence of his guilt. However, he is categorically forbidden to present the accused with false evidence or make false statements about facts which are supposedly known to the investigators. Such an incorrect approach to the interrogation by the investigator would cause a corresponding reaction by the accused. A person innocent of what he is being accused of will be put in a very difficult position, and on the other hand, a person having committed a crime but convinced that the investigator does not know about it, since he is making statements with no bearing on this crime, will easily be able to lead the investigator astray in his investigation. The investigator, upon interrogating the accused, must pay careful attention to his testimony. All actions connected with interrogating the accused, including his testimony, are included in the interrogation report. The main requirement placed on the report on the interrogation of the accused is an accurate and clear-cut, grammatically correct and logically consecutive account of the testimony of the accused. The report is written by the investigator or the secretary of the investigator who is present at the interrogation, or by the accused if he expresses a wish to do so. After the termination of the interrogation the document is read to the accused or read by him personally and signed by the accused and the investigator. With the aim of successful investigation and receipt of evidence from the accused during interrogation, and with the aim of avoiding possible collusion among the accused being in custody the law provides that the prisoners having committed crimes which have not yet been sentenced, must be kept in strict isolation. Accomplices in a crime or prisoners having a bearing on the case must be kept separately.[57] In order to maintain this situation the law requires the administration of the place of imprisonment to acquaint itself in detail with all information pertaining to the prisoners who have not yet been sentenced, and upon taking a prisoner into custody, depending on the circumstances of the case, to put the prisoner in a multi-prison cell or a single person cell.[58]

Questioning of witnesses is an extensive investigative operation which is intended for obtaining evidence or verifying it. A witness is a person questioned by the investigator as to a concrete fact or circumstance, which was personally experienced by the witness or about which he has heard and has a bearing on the case at hand.

The obligation of the witness is his public duty to give testimony on questions interesting the investigators, and in case the witness does not appear the investigator has the right to subpoena him. If the witness cannot appear for questioning because of some valid reason, the investigator can question the witness wherever he may be. The witness has the right to give written testimony and suggest additions to the questioning report at his discretion. At present some witnesses have maintained the old attitude toward the court and the investigation, according to which these witnesses consider that to give testimony at an interrogation is a waste of time. They either fear to be implicated or consider that, having given testimony, they will win enemies and therefore it happens that witnesses give vague, inconsistent and sometimes false testimony to protect the accused.

Such an attitude to the court and investigative organs was formed among the simple people of China for centuries. They saw that the organs of investigation and the court of exploiters were unjust and, besides unpleasantnesses, an ordinary person had nothing to expect from them, even if a person were called up as a witness. Therefore the task of the investigator in calling witnesses for questioning consists in explaining to them their public and civic duty and the importance of giving testimony for the state. A correct and patient approach to each witness is required. It is categorically forbidden to use coercion to make a witness testify. Close relatives of the accused and his lawyer cannot be forced to give testimony. To coerce these persons to give testimoney would be a gross violation of the legal rights and interests of citizens. In order to collect all necessary information on the case with the aid of questioning and to receive all information possible from each person questioned, the investigator studies the investigative materials and draws up a plan for questioning the witness. This plan also pursues the aim of avoiding possible dissatisfaction on the part of the witness by unjustified repetition during the interrogation and delays in the questioning. When the witness appears the investigator establishes his identity, brings out the relationship of the witness to the accused and the victim, and then informs him of the reasons for being called and explains his rights and duties, as well as the significance of his testimony for the case and the responsibility borne in case of refusal to give testimony, or in case of false testimony. The witness signs a statement that the warning has been given. The investigator pays particular attention to the political and ideological attitude of the witness,

his relationship to the accused and the victim, and conducts the interrogation with regard to this. Usually the question begins with the request that the witness tell everything he knows with a bearing on the case, omitting conscious falsehoods in his testimony and the concealment of facts known to him. Only when the witness has told in his own words everything he knows of the case, and certain parts of his story need clarification, explanations and more preciseness, does the investigator question the witness in a clear and understandable form. If the investigator considers it necessary, or if the witness requests, the questioning can be conducted in the form of questions and answers. Under no circumstances can the investigator give so-called leading questions.

If the witness expresses the desire to give written testimony, the investigator must fulfill his request, but after the testimony of the witness, written by him in person, the investigator has the right to question him. A record of the interrogation is kept by the investigator, the secretary of the investigator, or the witness if he wishes. The record is signed by the witness and the investigator. If it is necessary to question a minor, it is not recommended to summon him for questioning. It is advisable that the investigator himself go to the home of the witness or to the school where he is studying and question the witness in surroundings familiar to him, in the presence of parents or teachers. Signature of a statement indicating knowledge of responsibility for giving false testimony and refusal to give testimony is not required from minors. The interrogation record indicates where and in the presence of whom the minor was questioned. Upon questioning a deaf and dumb witness or a witness who does not speak the language of the given locality, the investigator must secure the participation of an interpreter, and a note is made in the interrogation report. In cases whereby the investigator is not satisfied as to the accuracy or truthfulness of the testimony of a witness he can and must check this testimony. The means of verifying testimony by witnesses are the following: a) comparison of the testimony as a whole or in part with the circumstances of the case, being learned from reliable sources, for example, inspection, examination by experts, etc.; b) comparison with other testimony by witnesses or confrontation between two witnesses; c) procedural operations resulting from testimony by witnesses, for example, search or investigative experiment.

Confrontation in Chinese criminal procedure is viewed as a special form of simultaneous questioning of two or more persons on the same matter. Confrontation

can be conducted between accused, witnesses, between witnesses and accused. The basis for conducting this investigative action is the presence of contradictions between previously given testimony as to one and the same fact. Confrontation is conducted in order to eliminate contradiction in testimony, or to expose the perjured testimony of one of the persons. The investigator prepares for confrontation in a suitable manner: he draws up a plan of the questioning, formulates the basic questions which he will ask each person in the confrontation, considers and determines who of the participants in this type of interrogation should be the first to answer the questions. Immediately before the questioning the investigator ascertains the relationship between the persons being questioned.

In cases when there is lack of agreement between the testimonies of the persons being questioned the investigator asks both persons participating in the confrontation if each of them holds to his testimony or admits the correctness of the testimony of the other. The investigator has the right to demand that each person being questioned indicate the evidence substantiating his testimony or refuting the testimony of the other person participating in the confrontation proceedings. In case of necessity the investigator can consent for the persons being interrogated to question each other on circumstances having a bearing on the case, in order that certain facts can be ascertained which the investigator wanted to establish by means of this confrontation. During the confrontation the investigator keeps a general record of the proceedings, which includes testimony of the persons being interrogated, his questions and the answers of the participants in the action. Each person questioned signs his own testimony, and the record of proceedings is signed by the investigator.

Interrogation with identification can be conducted in cases when there is basis to assume that the witness saw the suspect or the accused in the act of committing the crime or under circumstances connected with the crime and can identify him. Questioning is possible in case an unidentified corpse is discovered, which might be identified by someone. Finally, interrogation is conducted in the presentation of objects with the aim of identifying them, when these objects have significance for the case as material evidence, and persons to whom they are presented might identify them and identify the person in whose possession they had been. Thus interrogation with identification is conducted in case of necessity of identifying 1) persons, 2) bodies, 3) things.

Before the identification the investigator questions the witness on all indications and characteristic features which are remembered by the person being questioned and possessed by the person, body or thing which is to be presented for identification. It is established where, when, under what conditions and how many times the person being interrogated had seen the object identified. After this the investigator shows the person being interrogated several persons, among whom the identifying party must indicate the identified person. The object to identify is presented in the company of other similar objects. A body is presented alone. Identification is possible using photographs if it is impossible to present the object to be identified or if the body has been greatly disfigured. Upon identification the investigator determines the accuracy of the facts of the testimony, comparing them with the statements made by the identifying party when the object to be identified was presented. The results of identification are included in a document which is drawn up by the investigator and signed by the identifying party and the investigator.

6. Suspension and Completion of Preliminary Investigation

Suspension of Preliminary Investigation. During the process of investigation such a time may come when further operations are impossible, and therefore the investigator must suspend the investigation. Legislation in the CPR does not provide for obligatory cases whereby preliminary investigation must be suspended; however, practice firmly holds to such a position whereby the investigation can and must be suspended under the following circumstances: a) if, after ascertaining that a crime has been committed and an investigation has been conducted, the person having committed the crime has been found; b) if the accused has succeeded in going into hiding during the course of preliminary investigation; c) if the accused is seriously ill, and the illness hinders further investigation.

Before suspending investigation, the investigator must take suitable measures to remove the obstacles in the way of further investigation. If a person having committed a crime is not discovered, or if the whereabouts of the accused is unknown the investigator must initiate a search, and if the accused becomes ill, he must take measures to assure him of satisfactory medical attention. After this the investigator does not have the right to suspend the investigation until it is no longer possible to conduct the

investigation without the accused. Only then, when all possibilities for further investigation in the absence of the accused are exhausted, and the accused has not been located or is ill, the investigator must order the investigation suspended and present this order for the ratification of the procurator (if the case is being investigated by the procurator's office) or the chief of the organ of security(if the case is being handled by this organ.)

The procurator or chief of the organ of public security studies the materials of the case, and, if he becomes convinced that further investigation is impossible without the accused, approves the order. Otherwise, he requests the investigator to carry out additional investigative operations, after which the investigation is to be suspended. If the accused is located or if the condition of the health of the accused make it possible to continue the investigation, the investigator re-opens the investigation, formalizing this action by a special order to re-open investigation, approved by the procurator or the chief of the organ of public security. The discontinuance of a case during the stage of preliminary investigation must be carried out in cases stipulated by the Model System of Investigative Operations of the Procurator's Office of the CPR (1956). In addition, a case can be discontinued at the discretion of the investigator conducting the investigation and the procurator following the investigation. A case must be discontinued if there is a lack of actions in the crime which incriminate the accused, if there is insufficient evidence to bind the accused over to the court, in cases of the death of the accused, in case of the amnesty or pardon of the accused, upon establishment of a fact by the investigator that the accused was suffering from a mental disorder at the time the crime was committed.

At the discretion of the investigator and procurator the case can be discontinued if the crime is obviously insignificant and measures of punishment are inadvisable against the person who committed it, as well as the correction of the accused who committed a minor crime, because of which the accused is no longer dangerous to society. Discontinuance of a case is formulated by an order by the investigator, which is ratified by the procurator in the organs of the people's procurator's office, and in the organs of public security--by the head. After ratification of the order to discontinue the case, the investigator must inform the accused of the decision or his relatives, the institution, enterprise or person who sent the materials for instituting criminal proceedings to the procurator's office or

organs of public security. If the persons who originated the complaint are not in agreement with the decision to discontinue the case, they have the right to petition the higher-standing procurator's office to check the material a second time. The decision taken by the higher people's procurator's office as a result of a second review of the materials is final and binding for the organ issuing the order to discontinue the case.

Release from court action is one of the forms provided by law for discontinuing a case during the preliminary investigation stage. Article 14 of the Regulations on Punishment for Counter-Revolutionary activities provides that persons having committed counter-revolutionary crimes can be shown indulgence, while their punishment can be decreased or they can be released completely from punishment under one of the following conditions: 1) if they voluntarily approach the people's government, confess their guilt, and sincerely repent in the crimes they had committed; 2) if they frankly confess a crime before the discovery or investigation of the crime, or even after this, and if they sincerely repent and expiate their guilt by selfless labor; 3) if they committed a crime not at their own volition, but as a result of intimidation and deception on the part of counter-revolutionary elements; 4) if the counter-revolutionary crime committed by them before the liberation was not a major one, and if after liberation they repented in what they had done and broke off all connection with counter-revolutionary organizations.

In practice these criteria are also applied for persons committing other, not only counter-revolutionary crimes. Particular attention should be devoted to the situation whereby a criminal case can be kept from court trial if the accused appears with a plea of guilty, sincerely repents or commits acts which testify to his correction. This situation proceeds from the policy of the party and government on "the combination of suppression and indulgence." Many examples can be given from investigative practice, which characterize the implementation of this policy. Sent by the "Second Section" of the CC of the Kuomintang, the special representative for the Shanhai region, secret agent Chang I, arrived on the mainland on 8 February 1956, but meeting everywhere the high degree of vigilance of the masses, and perceiving the new atmosphere of socialist construction in the country, on 16 February 1956, he pleaded guilty before government organs and exposed many other counter-revolutionaries. The people's procurator's office of the

city of Hankow was indulgent with him and, after investigation of the case, did not turn him over to the courts. An order was issued providing for the release of Chang I from being turned over to the court. Suitable organs offered him financial aid and arranged for him to find work.[59]

The policy of "the combination of suppression and indulgence" and the marvelous success achieved in the course of carrying out socialist reforms in the CPR exert considerable influence on the Chinese people. In Kwangtung province a large number of counter-revolutionaries pleaded guilty before organs of the people's authority and asked clemency, receiving it in the majority of cases. These included not only counter-revolutionary elements, hiding deep in the underground, but American-Chiang Kai-shek agents as well as counter-revolutionaries returning from Hongkong and Macao. For example, in the Tatsun section of Techinghsiang county, a former bandit, Feng Chi-wei, seeing that the landowners, kulaks and former counter-revolutionaries were entering the agricultural producers' cooperative, voluntarily confessed his guilt and surrendered a pistol and 37 cartridges. Counter-revolutionary Wang Hsiang-ching, a member of several Kuomintang espionage organizations, including the "mainland operations" section, having received special training and arriving in Canton with the assignment to organize a "liaison point" and having seen with his own eyes the tremendous successes of his native land and learning of the indulgent policy of the government, voluntarily turned himself in to the organs of the people's authority and surrendered a portable radio transmitter. Throughout the province of Kwangtung former landowners, kulaks and counter-revolutionaries surrendered to the authorities more than a thousand fire-arms of various types, more than 70,000 cartridges and more than 8,000 various documents of counter-revolutionary content.[60] The policy of the "combination of suppression and indulgence" found its expression in the relation towards Japanese war prisoners, charged with crimes committed by them during the period of the aggressive war by Japanese imperialism against the Chinese people. In 1956 The People's Supreme Procurator General's Office of the CPR, following the policy of magnanimity, discharged 335 former Japanese soldiers and officers, such as Masataka and Kaminaka, who had committed minor crimes or had repented fully that which they had done.[61]

The resolution of the Permanent Committee of the All-Chinese Assembly of People's Representatives of 16 November 1956 "on an indulgent attitude toward the remnants

of counter-revolutionary elements in the cities and their useful labor" expanded even greater the possibility for investigative organs to free prisoners from court action in cases where they had voluntarily turned themselves in, sincerely repented and committed acts which testified to their correction. These magnanimous measures are applied in order to give former counter-revolutionaries the opportunity to repent and live an honest life, as well as to aid in the further liquidation of remnants of counter-revolutionary elements in the country. Only the people's procurator's office can carry out a decision to release from court action. The organs of public security do not enjoy this right. If the organs of public security come to the conclusion that such a decision can be arrived at for a specific case, they transmit the case with their conclusion to the people's procurator's office for the question to be resolved and the order to be drawn up. In all cases the order is made in the name of the people's procurator's office, independent of the organ which conducted the investigation of the case.[62] Copies of the order are sent to the accused and to the person who originated the charges. In cases whereby a petition was filed for a second verification of materials in the case, the higher people's procurator's office must immediately consider the petition or conduct an examination, studying the circumstances on the spot. On the basis of the results of the verification an order is drawn up which indicates the decision of the people's procurator's office. It indicates whether the office is in agreement with the petition or not. This order is sent to the person who filed the petition for a second examination and to the people's procurator's office which drew up the order to release the prisoner. Upon receipt of the order by the higher people's procurator's office, if a decision has been carried out in agreement with the petition, the procurator's office demands those persons who received copies of the order releasing the prisoner from court action to return this order, draws up a bill of indictment and transfers the case to the people's court.

Presentation to the Accused of the Completed Case Materials. In cases when the investigator considers that the evidence gathered in the case sufficiently incriminates the accused and that further investigation will supply no supplementary material, the investigator draws up an order for terminating the investigation and informs the accused of this. In addition, he informs the accused of the fact that the case is being turned over to the people's court. The investigator reads for the accused the order terminating the

examination, explains to the accused the the final formulation of the indictment and his rights to acquaint himself with all materials of the case, and gives him the opportunity to acquaint himself with the case and file a petition for supplementary investigation or submit a request dealing with the case. This moment is of great procedural significance. In the first place, it is the decision of an investigative organ to turn the case over to the court, and, in the second place, it assures the accused of the right of defense, giving him the opportunity to acquaint himself with all evidence assembled for the case.

Upon announcing the termination of the investigation to the accused, the investigator presents him with sufficient time to acquaint himself with all the materials of the case. A limitation of time is not permissible. If there are several accused in a case, each of them is presented all the materials of the investigation, and not only those which directly concern the specific accused. If the accused for some reason is not able to read the case materials, this must be done by the investigator, explaining all incomprehensible points to the accused. After becoming acquainted with the materials of the case, if the accused files a petition for supplementary investigation or makes any appeal on the case, the investigator must conscientiously consider the petition and decide which petitions and appeals are well-founded and should be met, and which of them are unfounded and should be refused.

The initiation of an appeal for supplementary investigation has tremendous importance for insuring against unfounded binding over for trial and for insuring complete pre-trial investigation and correctness of sentence. If the accused has acquainted himself with the materials of the investigation and informed the investigator of his ideas and objections to the charges the investigator can verify all this and, depending upon the results of this verification, determine the further course to be taken in the case. The act of presenting the accused with the results of the investigation is formulated by the investigator in a document which includes all statements made by the accused. The investigator must include in this document his motives for turning down petition by the accused and the appeals by the accused in connection with this, with a detailed report on the foundations for the appeal. The document testifying to the fact that the accused has been acquainted with the materials of the case is signed by the investigator and the accused. In cases

where the investigator decides to conduct supplementary investigation, based on the petitions of the appeals, upon completion of the investigation he informs the accused of the results.

After fulfilling all these requirements the investigator, if he recognizes that the results of preliminary investigation form a foundation for turning the case over to the courts, draws up a bill of indictment for the case, where he indicates the results of the investigation and formulates the charges which are backed up by the case materials and must become an object of court investigation. The bill of indictment determines the scope and framework of the trial and at the same time serves as a means of defense for the accused who is turned over to the court. It determines those facts which must be studied in court and those persons, the actions of whom become an object of court examination. The bill of indictment consists of three sections: introduction, description and resolution. The introductory section indicates in detail the biographical information on the accused, the measure of suppression used against him and the qualification of the criminal act committed by him. The descriptive section contains the factual circumstances of the case established by the investigation. The resolution section contains juridical conclusions on the factual circumstances of the case as outlined. The bill of indictment includes a list of persons to be summoned to court, the certificate indicating the measures of suppression for the accused, material evidence and on initiated civil action. If the measure of suppression has been to keep the accused in custody, the certificate indicates how long the accused has been imprisoned.[63]

The bill of indictment, drawn up by the investigator of the people's procurator's office or organ of public security, is sent along with the case materials to the procurator's office for verification and approval. Approval by the procurator of the bill of indictment gives it the force of a deed expressing the decision of the people's procurator's office to insist on indictment before the court. Special organs have been formed in the people's procurator's offices of all levels to check completed case investigation. Organs have also been formed which check the legality of the arrest and detention of the accused. In the People's Supreme Procurator General's Office this work is done by a special administration, and in the provincial people's procurator's office--by sections, in the departments of the provincial people's

procurator's office--by sub-sections, and in county procurator's office--by a specially delegated procurator. In the people's procurator's offices of county and city districts the practice of distributing duties varies. In some procurator's offices the duties are distributed in such a manner that one functionary approves the binding over to court of an accused and supports the state indictment in court, while another conducts work on supervision of the investigation, etc. In other procurator's offices one functionary carries out all work on a concrete case, beginning from the institution of criminal proceedings and ending with support of the indictment in court. In these procurator's offices supervision over the investigation of cases by organs of public security is carried out by the chief procurator of that particular people's procurator's office.[64]

After the case materials and the bill of indictment are verified, the organ which conducts the verification presents the chief procurator of that procurator's office with his opinion. The final decision is made by the chief procurator, and he approves the bill of indictment. Verification of the case materials presented to the procurator by the investigator of the people's procurator's office or organs of public security are conventionally divided in Chinese juridical literature into two parts: verification of the facts of crime and verification of the observance and correct application of laws.[65] Upon verifying the facts of the crime, the procurator is required to establish whether sufficient case materials have been collected and whether these materials correspond to the circumstances described in the bill of indictment, and whether the people's court can arrive at the truth on the basis of these materials. With this aim in mind the procurator is required: 1) to make a careful study of the bill of indictment and check the correctness of it not only in content but in form; 2) to verify whether the facts of crime enumerated in the indictment are supported by the evidence collected for the case; 3) to verify the correctness of the formulation of all legal documents in the case; 4) if there are materials in the case testifying to the refusal on the part of the investigator to honor the petitions of the accused, to check carefully the basis of the petitions and the motivation for the refusal; 5) to verify the correctness of the investigation; 6) to verify whether the question of the fate of the material evidence has been correctly resolved by the investigator.

If he has found no violations, the procurator must evaluate, comparing them with other case materials, the testimonies of the accused, witnesses, the conclusions of experts, the quality of the material and written evidence, etc. Verification of the case materials, in the light of the observance and correct application of the laws during investigation, amounts to the following: 1. the procurator establishes whether the investigation was conducted in accordance with the provisions of the law. In view of the fact that a code of criminal procedure does not yet exist, the procurator must base himself on the requirements of the Laws on the Organization of the People's Court and the People's Procurator's Office of the CPR, the Regulations on Arrests and Detentions and other laws pertaining to criminal procedure. 2. The procurator determines whether laws were violated during interrogation, (for example, whether coercion and threats were used against the persons being interrogated). 3. The procurator verifies whether measures of legal compulsion were applied to the accused in a lawful manner, particularly arrest or detention, and whether it is advisable to continue these measures in the future. 4. The person making the check establishes whether searches and seizures were made in a legal manner.

Having verified that the requirements of procedural law were observed, the procurator must determine whether material law has been correctly applied, for which he, in studying the case, pays careful attention to whether the actions of the accused indicate that he committed the crime and whether there is any basis for discontinuing the case. He checks whether the proper material law has been applied in the specific case. The chief procurator of the people's procurator's office is delegated with broad authorities in respect to making a decision for a case presented to him for approving the bill of indictment and the binding over for trial. On the basis of the verification of case materials and the bill of indictment, the procurator has the right to make one of the following decisions: 1) to approve the bill of indictment if he agrees with the formulation of the indictment and if the bill of indictment corresponds to the case materials. The procurator approves the bill of indictment with a resolution, certifying it with the seal of the procurator's office. After this he transmits the case to the people's court with his proposal to bind the accused over for trial; 2) to request the organ conducting the investigation to draw up a new bill of indictment if he determines that the bill of indictment has been drawn up incorrectly or has not been formulated clearly;

3) to terminate the case if there is a basis for doing so. In this case the procurator informs the accused and those persons who filed the request for the institution of criminal proceedings of the decision taken by him; 4) to return the case for supplementary investigation if he determines that during the investigation facts and circumstances of the case have been insufficiently clarified, if there are contradictions in the evidence or if insufficient evidence has been assembled.

If the procurator establishes insignificant omissions in the case, he does not return it for supplementary investigation but has the right to summon the investigator either orally or in written form, and demand explanations from him or request that he conduct supplementary investigation. For cases in which, in the opinion of the procurator, should be discontinued or returned for supplementary investigation to the organs of public security, the procurator must write out an order indicating the factual and juridical bases, as a result of which the procurator has come to the decision. In sending a case for supplementary investigation, the order indicates the specific questions which should be clarified, as well as the investigative operations, which, in the opinion of the procurator, should be carried out. In the order on discontinuing a case or returning it for supplementary investigation, the procurator decides on measures of suppression which should be applied in respect to the accused.

CHAPTER THREE

PRELIMINARY COURT ACTIONS BEFORE TRIAL

1. Procedure in Bringing to Trial. Functions of the Procurator

Preparatory actions by the court before trial in Chinese criminal procedure include a hearing of cases coming from the people's procurator's office as well as a preliminary preparation of private indictment cases for subsequent hearing in court. In respect to the first group of cases, the preparatory actions of the court are a stage in bringing a case to trial, and in respect to the second--carrying out the necessary investigation and decision of the question of whether a case should be brought to court. Bringing a public indictment case to trial is viewed in criminal procedure as an independent stage of the process. The system of turning over a case to trial in the CPR as provided in criminal procedure guards the interests of the state and eliminates the possibility of incorrectly bringing persons to criminal responsibility, and it also guards the interests of the accused.

Presently viewing the stage of bringing a case to trial as one of the basic stages in criminal procedure and placing before it important tasks, judicial practice in the CPR has created within a very short time a system of bringing to trial which corresponds fully to the above conditions. The institution of bringing to trial has undergone substantial changes in Chinese criminal procedure, particularly after the liberation of the entire country. With the organization of the people's procurator's office some cases began to come before the courts with the procurator's bill of indictment. These cases were handled at the preliminary court hearing approximately in the same form as exists as present. The majority of criminal cases before the second half of 1955 were instituted directly in the people's courts at the demand of institutions, enterprises, organizations and citizens victimized by criminal acts. In view of this the judges of the people's courts conducted the preliminary investigation themselves and, if they were able to collect sufficient evidence for indicting a definite person for a definite crime, they turned over the case to the legal college for trial. If there was insufficient evidence, the case was dropped.

In directing a case to the judicial college the case did not go through the stage of formally handing over to the court, but nevertheless a form was applied

which to a certain degree insured that the materials of the case were verified before trial. The composition of the court which was to try the case (that is, a judge and people's assessors), was to study and verify all materials in the case before the fixing of a court session, and if the court found that enough evidence had been collected for the case, a place and time was announced for the trial and a list of persons was drawn up, the participation of whom was necessary for the trial. Whereupon all those who were to be present would be summoned to the court session and the accused would be given a copy of the bill of indictment or the declaration on the institution of proceedings. Analagous actions on less complex cases were conducted by a judge personally, and he would try the case in court session.

A special determination to turn the accused over to trial was not submitted, and the judge acting as chairman of the college, or judge who was trying the case singly, would make a note on the declaration or complaint that the case could be tried in court session. Since the second half of 1955 all cases, with the exception of private indictment cases, have been investigated by the organs of public security or of the people's procurator's office, but all cases, independent of the organ conducting the investigation, on the basis of Articles 10 and 11 of the Law on the organization of the people's procurator's office, are transferred to the people's court. The people's procurator's office directs a case to court together with the bill of indictment and accompanies it by a statement of the chief procurator on the institution of court proceedings. Cases sent to the court by the procurator's office, on the orders of the chairman of the people's court, are given to one of the judges who carefully acquaints himself with all materials, after which the case is considered at a preparatory session in order to verify the legality and foundation of the preliminary investigation which has taken place and in order to decide whether the accused is to be turned over for trial. The preparatory session in all courts, both general and special, is conducted by the judge who has studied the case and who carries out the function of acting chairman, plus two people's assessors, who have also acquainted themselves with the case as a preliminary. If the chairman of the court or chamber head takes part in the trial, he carries out the functions of acting chairman himself.[1]

No person who has not been elected or appointed in a correct manner can participate as judge in the

preparatory session. A judge cannot participate in hearing a case at the preparatory session if he is one of the sides or a relative of one of the sides, if he or any of his relatives have an interest in the outcome of the case, or if he were a participant in the case as witness, expert, investigator, prosecutor, defense counsel or plaintiff. Persons who are related cannot participate in the preparatory session. A secretary must be present at the preparatory session, in order to keep a record of the session. The question of the presence of a representative of the procurator's office at the preparatory session is usually decided by the procurator's office itself, but if the court decides that such a presence is necessary, it can inform the procurator's office of this. Witnesses and experts are usually not summoned to the preparatory court session, and the accused is also usually not questioned. However, in cases when it is necessary to pinpoint information on the identity of the accused or his declaration presented to the court, the accused can be summoned and questioned at the preparatory session.

The question of the possibility of the defense counsel to participate in the preparatory session is not covered in legal literature nor in legislation, however, the conclusion can be arrived at that the defense counsel does not have the right to participate in this stage, since the very question of the participation of the defense counsel in the case is decided here, a fact which consequently means that the accused actually does not have the right to make use of the services of defense counsel until an affirmative decision is made at the preparatory session to bring the case to trial. After the session opens the chief procurator or another functionary from the procurator's office who has the full authority of the procurator presents the case to the acting chairman of the preparatory session. If neither the procurator nor a representative of the procurator's office is present at the preparatory session, the case is presented by the acting chairman. Thereupon the judge and the people's assessors verify as to whether sufficient evidence exists in the case and if there is legal basis for trying the case. If there is any doubt or any questions, they present these to the speaker. The preparatory session can be shortened on a decision by the judges participating in the session. If after becoming acquainted with the materials on the case before the preparatory session,

the judge and people's assessors find that there is no necessity to report on the circumstances of the case at the preparatory session, immediately after the preparatory session has been convened they can ask questions arising in connection with studying the case, without hearing a report, on facts or evidence in the case. The questions must be answered by the procurator if he is present, or the judge if the procurator is not taking part in the preparatory session. After the case is discussed the judge and people's assessors have a conference and decide whether the accused should be brought to trial. The conference takes place without the participation of the procurator, but in the presence of the secretary making up the court records.

During the conference the people's assessors and judges possess equal rights, and all questions are studied and decided by them jointly. In case of a difference of opinion, questions are resolved on the basis of the principle of the subjugation of the minority to the majority, and the opinion of the judge who is in the minority is written into the court record of the preparatory session. The decision of the preparatory session is submitted in the form of a determination, which is signed by the judges and people's assessors. Before setting forth the questions which are decided in the preparatory session, it is necessary to mention the role of the procurator in this stage of the process, for he observes the legality of cases before the people's courts.[2]

The main task of the procurator participating in the preparatory session consists in reporting to the court all the circumstances of the case, explaining and arguing the indictment and presenting all evidence in the case with the purpose of aiding the court in verifying the material of the case. For a more detailed study of the case by the court the procurator must answer all questions asked of him by the judges which have a bearing on clearing up the circumstances of the case being heard. The correct implementation of this important task demands careful preparation on the part of the procurator for this session. Before the session the procurator carefully studies the case, analyzes all evidence, checks the position of the accused (for example, were the measures of suppression used in respect to the accused applied correctly) and establishes the presence and correctness of the necessary legal documents, after which he plans his report at the preparatory session. The procurator is the representative of the state indictment and must support the viewpoint of

the indictment, but he is obligated not to conceal weak points or failures in the investigation. During the report the procurator must be objective, and if he establishes that insufficient evidence has been collected for the case to bring the accused to trial, he must take the case from the court for supplementary investigation. The next task of the procurator who is participating in the preparatory session is supervision over the legality of the hearing and the submission of legal determinations. Upon discovery of violations of the law by the judges, the procurator is required to voice his opinion and request that the violations be eliminated in the preparatory session. In case of a criminal violation of laws by judges the procurator institutes criminal proceedings in the established manner.

If the decision submitted in the preparatory session does not reflect the true circumstances of the case in the opinion of the procurator and has been submitted in violation of the law, he can protest this decision to the judicial committee of this particular court. In rejecting the protest of the procurator by the judicial committee, the procurator may submit a protest to a higher court, the decision of which is final. The carrying out by the procurator of his functions during the stage of turning a case over to trial insures the legality of the decisions of the preparatory session.

2. Questions Which Are Resolved in the Preparatory Session

The court which hears a case in preparatory session decides whether there is sufficient basis to turn the accused over to trial, and whether materials have been collected which can correctly answer the question of the guilt of the accused during the trial. Proceeding from this, the court must answer the following questions in the preparatory session, after it recognizes that the given case is under its jurisdiction. These questions make it possible to determine whether the accused can be turned over for trial: 1) are there indications of the commission of the crime in the actions of the accused, and are there any circumstances which eliminate the possibility of criminal prosecution; 2) is it necessary to apply punishment to the accused in the given concrete case; 3) has the preliminary investigation been conducted in accordance with procedural requirements; 4) has the crime which has been committed by the accused been properly qualified; 5) has the bill

of indictment been correctly drawn up. If it is established that the case is not under the jurisdiction of the given court, the preparatory session, without resolving the above questions, submits a decision to transfer the case to another people's court.

The preparatory session, resolving the above questions on the basis of concrete circumstances for each case, can submit one of the following decisions: 1. A decision to return the case to the procurator's office for further investigation in view of vagueness in facts and incomplete evidence. This decision must clearly indicate the circumstances requiring supplementary investigation. In addition the accused is informed that his case has been returned for supplementary investigation. The case can be sent to the procurator's office for supplementary investigation only in cases whereby the materials of the preliminary investigation cannot be supplemented during the court hearing. In cases where insignificant omissions have been established for the case or the bill of indictment has been drawn up incorrectly, the court does not return the case to the procurator's office but corrects the mistakes and eliminates the defects in the work by the organs of investigation and the procurator's office. 2. A decision to drop the case due to the lack of corpus delicti in the actions of the accused or in view of the fact that although there is corpus delicti in the actions of the accused the law provides that action should not be initiated but that the case should be dismissed. A decision to dismiss the case is also submitted in the case whereby the procurator makes the declaration on bringing action before the court. The decision must be sufficiently motivated with an accurate list of reasons by means of which the court came to the decision to dismiss the case. The decision is transmitted to the procurator's office which directed the case to the court, as well as to the accused. In case the procurator disagrees with the decision of the court on dismissing the case, he can lodge a protest in compliance with law before he receives the decision.[3] A copy of the protest is sent to the accused. 3. A decision to bring the accused to trial for cases, the circumstances of which are clear and where there is a sufficient quantity of evidence.

A decision to bring the accused to trial is also reached in a case, the chief circumstances of which are clear and there is sufficient evidence establishing these circumstances, and the secondary questions, although they

are unclear and the evidence substantiating them is insufficient, but these secondary questions cannot influence the case. In reaching a decision on such a case the court either demands supplementary materials from the procurator or obtains new evidence during the course of the hearing and verifies secondary circumstances which have been insufficiently brought out at the preliminary hearing.

At the preparatory session, upon bringing forth a decision to bring the accused to trial, several questions must be resolved, connected with preparing the case for hearing. The following should be clearly indicated in the text of the decision: a) time and place of the court session; b) whether the case will be heard in open or closed session; c) whether the participation of the procurator is necessary; d) whether it is necessary to appoint a defense counsel. The accused has the right to appoint his own counsel, and the people's court is required to inform the accused of this right. If the procurator appears in the court session as prosecutor, the accused must be informed of this, so that he may choose a defense counsel. In all other cases where the participation of a defense counsel is required, the court appoints one for the accused, if the accused chooses no counsel for his own defense; e) whether it is necessary to use the services of an interpreter; f) what persons must be summoned to the trial; g) whether it is necessary to change the measure of suppression chosen by the procurator's office in respect to the accused, or whether it is necessary to apply new measures, if they had not been selected earlier. If the preparatory session considers it unnecessary to keep the accused in custody any further, it can select another, milder measure of suppression. A decision must be made at the preliminary session on the arrest of the accused, who had been arrested without the sanction of the procurator, but which was done on the basis of case materials, which indicated that to remain at liberty any longer would be dangerous for society. In addition, the preparatory session can resolve the question as to increasing measures of suppression. If it is established that the accused, being at liberty, had the intention to conceal himself, attempts to destroy or falsify evidence, has no permanent residence, etc., he can be put under temporary custody on the basis of Article 5 of the Regulations on Arrests and Detentions.

3. Preparing a Case for Hearing

In order for a successful hearing the judge must acquaint himself in detail with the case materials sent for his perusal before the court session, in accord with the decision of the preparatory session, study and outline the methods and sequence of handling the case, draw up plans for questions if he considers that the case is complicated and it will be difficult to conduct the inquiry without a plan. All technical work in preparing a case for court consideration is done by the secretary who kept a record of the preparatory session. On the basis of the decision handed down at the preparatory session the secretary sends the procurator's office an original of this decision, and to the accused--an original of the decision of the preparatory session and a copy of the bill of indictment.[4] If the preliminary session has resulted in a decision to dismiss the case, it is handed to the accused in the original without the bill of indictment.[5]

In handing the accused the above documents the secretary informs him that he has the right to appoint counsel for the defense, request the summons of new witnesses and the presentation of new evidence, and also explains the rights of the accused in court. The witnesses, the plaintiff who is bringing a civil suit in the given criminal case, or the representative of his legal interests receive a summons to appear at court, while the counsels for the defense, experts and interperters are informed by letter of the day of the hearing. All above documents must be delivered to persons summoned to court at least three days before the case is heard. In delivering documents it is necessary to obtain proof of the fact that the documents were accepted by the person to whom they were addressed or another person who will transfer them to the addressee. The person receiving the documents must indicate the time and place of delivery, sign his name or place his seal, and if he is illiterate, place a finger print. Corroboration of the receipt of documents is required in order that the court may verify the correctness of the facts of document delivery during the court session, particularly the delivery of the bill of indictment to the accused. In respect to cases which are to be tried in open court session, the secretary explains the circumstances of the case, the grounds for the decision, the time and place of the trial. This announcement is made by the secretary on the court bulletin board, in order that every citizen can read it. In submitting a decision

at the preparatory session for changing measures of suppression the secretary carries out the procedure connected with this, and in carrying out a decision for cognizance--receives the signature of the guarantor. This completes the preparatory actions of the court preliminary to the trial of the case which has proceeded from the people's procurator's office with the bill of indictment.

4. Preparatory Court Actions in Private Indictment Cases

Court actions preparatory to court trial in private indictment cases, which are initiated by the plaintiff directly in court, differ somewhat from the actions taken in respect to public indictment cases. In the preparatory session the cases are considered only after several other acts carried out by judicial functionaries. Having accepted a private indictment case and becoming acquainted with the materials, the judge may consider it alone if he considers the criminal case to be insignificant. However, in such a case he must obtain such instructions from the chairman of the people's court or the acting chairman of the judicial college, where the possibility of single examination of a case will be indicated.

Certain questions must be resolved before the court convenes, and in case of necessity, suitable investigative acts must be carried out. First of all, the question as to whether the case is in the jurisdiction of the given court is decided in the process of pretrial preparations. Upon establishing that the case is not in the court's jurisdiction, the court must make a decision to transfer the case to another court which has jurisdiction over it. Then the question is considered as to the presence of evidence and as to whether the evidence presented can serve as a basis for initiating criminal action, in other words whether the evidence presented establishes the fact of crime committed by the person mentioned in the indictment. If there is insufficient evidence for initiating action, the plaintiff may be requested to present sufficient evidence within a definite period. However, the court itself may conduct the necessary investigation in order to establish evidence or to verify material presented to the court. The purpose of these actions by the court consists in examining the circumstances of the case from all sides, collecting all evidence both for and against the indictment, in order to avoid a one-sided and objective approach to the accused in court. In the process of verification conducted by the court, if it is considered necessary the person against whom the complaint has been lodged can be sum-

moned to court in order to inform him of the main facts of the indictment and ask him if he considers it expedient to request witnesses or experts to be summoned or if other evidence should be examined. If the plaintiff does not present supplementary evidence in the period established by the court, and the court functionaries cannot verify available evidence or collect supplementary evidence, the materials submitted by the plaintiff are nullified or a decision is made to reject the initiation of criminal proceedings. In case the materials are nullified the plaintiff can present supplementary evidence and once again file a petition to initiate court action. The decision to refuse to initiate criminal proceedings can be appealed by the plaintiff to a higher people's court.

After the plaintiff has presented his materials and petition to the court and after the court has verified them, the question is resolved as to the presence of indications of corpus delicti in the actions of the accused. If there are no such indications, a decision is submitted to dismiss the case. Cases are possible whereby after explanations to the plaintiff that the case cannot be continued since the actions of the accused show no indications of corpus delicti, the plaintiff can withdraw his complaint voluntarily. In cases whereby it is established that the violations indicated in the complaint by the victim are administrative violations, the case is transferred to suitable organs. This affects a limited range of insignificant, petty cases, which were previously considered by people's courts at the complaint of victims, or institutions, enterprises and social organizations, which acted as prosecutor. In regulating the question of jurisdiction of criminal cases (1956) the People's Supreme Court instructed that certain cases must be handled not by people's courts but by administrative organs. These cases include: a) cases of unworthy acts committed by employees of state institutions, enterprises and social organizations, for example, omissions in office of a minor type, a thoughtless mode of life, etc.; b) cases of insignificant violations of traffic regulations c) cases of insignificant violations of laws on the management of industrial and commercial enterprises; c) cases of non-payment of taxes due to slump in business.

As for cases which are out of the framework of private indictment cases and which should be investigated by organs of the people's procurator's office, the court must make a declaration of crime committed and directed to the people's procurator's office with all available materials. The court informs the person mak-

ing the complaint as to the transfer of the case to the jurisdiction of another people's court, or a transfer of the materials to the people's procurator's office. If in studying the case the judge comes to the conclusion that the procurator should participate as prosecutor, on the basis of Article 14 of the Law on the organization of people's procurator's offices, the court submits a decision for the participation of the procurator, and this decision is sent to the procurator's office. In designating measures of suppression in respect to the accused in cases of private indictment, as a rule arrest and custody are not selected. Usually the courts designate one of the types of cognizance for measures of suppression--personal or property. As for cases of private indictment to be heard, the procedure of deciding the questions of time and place before the court session, as to whether the trial should be open or closed, the summoning of sides, witnesses, experts and interpreters, the delivery to the accused of a copy of the indictment or complaint, as well as the selection of measures of supression, is the same as in cases of public indictment, that is, all these questions are considered in the preparatory session of the court, after which the secretary of the preparatory session carries out all technical work.

CHAPTER FOUR

COURT PROCEDURE IN A COURT OF THE FIRST INSTANCE

1. Forms of Prosecution

Prosecution in Chinese criminal procedure means the public-legal function of the organs of the people's procurator's office and the procedural activities of those persons authorized by law, directed at establishing the grounds and limits of criminal responsibility of the accused, and on the incrimination before the court of a specific person for the commission of a specific crime. The development of Chinese criminal procedure has led to the formation of state prosecution as the basic form of criminal prosecution in court. But in the great majority of criminal cases, state prosecution was preceded by certain other forms of prosecution, which in their time played a positive role in the development of this institution. Criminal procedure in China is aware of the following forms of prosecution: 1)state prosecution, which is carried out by the organs of public security; 2) public prosecution; 3) state prosecution carried out by the people's procurator's office, and 4) private prosecution.

Participation of the Organs of Public Security in Prosecution at Court. In the CPR the organs of public security are investigative organs and organs of security. Therefore the functions of court prosecution are not inherent to them. As a result of the fact that in the process of the development of the republic the organs of the people's procurator's office could not immediately carry out all functions assigned to it (due to insufficient organizational forms and lack of manpower) in certain categories of counter-revolutionary cases, in the simplest criminal cases where the circumstances were sufficiently clarified and where there was no doubt in the evidence collected, prosecution in the people's courts was supported by functionaries from the organs of public security, and these cases went directly from the organ of investigation to the court, by-passing the procurator's office; however, the person appointed by the organ of public security to appear in court carried out only the functions of the representative of the state prosecutor and did not supervise the legality of the trial.

Public Prosecution is a form of prosecution which presently is almost out of use in the courts of China, but which in its time had a great significance for expos-

ing many crimes and convicting criminals. Public prosecution was conducted in criminal cases transmitted by institutions and organizations directly to court for investigation and handling. Cases whereby organizations, institutions and enterprises could appear as prosecutor were the following: cases of crimes in office by functionaries of a given organ, criminal cases directly connected with the operations of a given organ (for example, falsification of documents discovered by the customs administration); cases dealing with the falsification of receipts for taxes in order to evade payment; cases of commercial crimes, etc. In these cases action began directly in court after the presentation of the indictment by the organization, enterprise or institution. The organ initiating the action was to send its representative to court as prosecutor in order to participate in the trial. The public prosecutor enjoyed the legal rights of a side in the case and carried out the same functions as the procurator in supporting the indictments. But the rights of the institutions, organizations and enterprises were limited to bringing the indictment before the court and supporting the prosecution during the case.

This form of prosecution was considered at one time in the CPR to be a form of state prosecution, developing during the revolution and brought to life by the people's courts. This concept was grounded in the purpose of the prosecution, which consisted in safeguarding state and public interests. Subsequently a general opinion was formed that this was a particular type of public prosecution, proceeding from the collectives of enterprises, organizations and institutions.

The proportion of public prosecution was rather large. According to statistical data of the people's court of the Peking Wuhsiangmen district, during the period between January and April 1955 this form of prosecution made up 25% of all cases tried by the court. A variation of public prosecution was "citizen " prosecution, which took place in military tribunals during the first days of the formation of the state and in people's tribunals formed during the period of carrying out the land reform, the popular movements against the"three evils" and against the "five evils," as well as during the period of the campaign to stamp out counter-revolutionary elements. This form consisted in the fact that any citizen could directly present an indictment to a tribunal against any person suspected of committing a crime, and he could participate in the trial of the case as prosecutor. "Citizen prosecution " as a form of prosecution in court played a particularly import-

ant role in rural areas during the first years of the existence of the CPR. The destruction of the feudal forces in the country where the great majority of the population lives on the land and the overcoming of the age-old fear of the feudal lords by the peasants could not be carried out in a short time by the organs of the people's procurator's office and the organs of public security without broad participation by the masses.

Introducing the "citizen prosecution" the state attained two ends; in the first place, many crimes were discovered in a minimal period, and in the second place, citizens, basically peasants, appeared in court as prosecutors and were able to overcome their fear of landowners, were drawn into government operations and were able to gain practical convictions in the truly popular policies of the state. At present, as a result of the strengthening of the organizational structure of the people's procurator's office and the reinforcement of its organs with experienced cadres, as a rule state and private prosecution are implemented, while state prosecution is delegated only to organs of the people's procurator's office.[1]

State prosecution in criminal procedure in the CPR is a prosecution supported by the procurator's office in the name of and in the interests of the state against persons turned over to the court by established procedure for crimes, in the commission of which they have been implicated with a sufficient quantity of evidence. Article 10 of the Law on the organization of the people's procurator's office delegates the people's procurator's office the responsibility of bringing public indictment before the people's court. The obligation to incriminate the defendant, to prove his guilt in the crime or, in other words, to support the prosecution in court, lies with the prosecutor, the role of which is occupied by the chief procurator or one of his procurators, delegated by him. But besides the function of prosecution, the procurator in court exercises supervision over the legality of the trial and the justice of the sentence. "During the trial of cases initiated by the people's procurator's office, support of the public indictment and supervision over the legality of the trial process are carried out by the chief procurator or by a procurator appointed by him, who acts in court as the state prosecutor."[2]

Support of the indictment in the people's court in cases initiated by the people's procurator's office is obligatory for the organs of the procurator's office.

For all other cases, which were not initiated by the people's procurator's office, the participation of the state prosecutor is non-obligatory, but the chief procurator may send a procurator to court to participate in the trial as state prosecutor and for exercising supervision over the trial. In case the people's court hands down a decision requiring the participation of a prosecutor in the case, the chief procurator or a procurator appointed by him from the procurator's office appears as prosecutor.[3]

It is evident that the scope of cases in which the procurator's office participates as prosecutor is extremely broad and that there is no limitation for the prosecution in participating in the trial of any criminal case in court. This is corroborated by the practice of the organs of the people's procurator's office. The support of the state indictment in court is one of the chief functions of the people's procurator's office, emanating from its tasks as an organ which exercises supervision over people's democratic legality.[4]

From the procedural point of view the activities of the procurator, participating in a trial, are activities in carrying out the main criminal-procedural functions of the procurator's office--the functions of criminal prosecution, which are one of the forms of procurator's office supervision over legality. This form of supervision is not inflexible, for it changes at various stages of criminal procedure independent of the procedural particularities of the various stages. The position of the procurator in court differs from his position before the trial. Before the trial he is the director of the preliminary investigation. During the trial stage the procurator occupies the legal position of one of the sides, carrying out criminal prosecution by supporting the state indictment. The demand of the procurator to prosecute the criminal finds its expression not only in the drawing up of the bill of indictment but in its presentation to the court for examining the substance of the case. The procurator becomes a side of the case only after the criminal case has been accepted by the court, that is, from the moment the court session opens to try the case. During the stage of preparatory actions by the court before the case opens, the procurator substantiates the necessity of prosecuting those persons indicated in the bill of indictment and is the representative of the organ observing legality, but he is not a legal side due to the special role of the preparatory actions of the court.

During the trial the procurator aids the court in

establishing the guilt of the defendant and furnishes proof for the charges presented by him on the basis of the materials of the preliminary investigation. He participates actively in the trial, and all of his actions take place within the forms established by law. On each question arising during the trial, the procurator presents his opinion and conclusion. He must incriminate the defendant in the commission of the crime, presenting evidence on the basis of which he has come to the conclusion as to the guilt of the defendant, and he must substantiate this guilt, refute the arguments of the defendant brought forth to deceive the court and give his opinion on the degree of punishment for the accused. If during the course of judicial inquiry the procurator becomes convinced of the fact that the accused is innocent and that there are insufficient grounds to indict him, he must withdraw the charges and under no circumstances attempt to juggle the evidence for the prosecution. The procurator may not insist on the formulation of the bill of indictment if the results of judicial inquiry have changed it in any way. The state prosecutor formulates all of his conclusions in the speech of indictment and in the debates between the sides.

Private prosecution. A person directly suffering damage due to a crime may appeal directly to the court with a petition to institute action against a person having committed criminal actions in respect to the petitioner. The petitioner in this case will be a private prosecutor, enjoying the rights of a legal side in the process. Private prosecution cases are comparatively small criminal cases dealing with crimes having no great harm for society, and having no great public danger. These include crimes such as disturbing the peace, committed under extenuating circumstances and directed against the person and dignity of an individual citizen; minor bodily injury and minor scuffling; defamation of character, slander and certain sex crimes.[5]

Such cases can be solved in or out of court, the latter excluding the necessity of trial. The victim-private prosecutor has the right to withdraw his complaint from court during the course of the trial, but it must be before a sentence is handed down. If the complaint is withdrawn the court can submit a decision on this after which a conciliation document is given to both sides in the case. If the accused is not agreeable to the conciliation and the withdrawal of the petition by the victim, the content of the case is tried before the court. In case the parties agree out of court they must present a petition to the court to dis-

miss the case. Previous procedure provided that agreement out of court must be formulated by a people's conciliation commission, issuing three copies of the statement to be presented to the court, which would ratify them, certifying them with the seal and would return two copies of the paper to the parties, and one copy would remain in court in order to forestall a secondary appeal by the victims after the conciliation. We should note that the people's conciliation commissions at a definite stage played a positive role in cutting down the number of criminal cases coming before the courts and in conciliating the parties appealing to the court.[6]

In some private prosecution cases, for example, cases of illicit cohabitation, the procurator may take a part on his own initiative or on the decision of the court. In this case the functions of the prosecution are transferred completely to the procurator, and the private prosecutor appears as victim or a witness, that is, the case assumes a public nature.

2. Legal Status of the Counsel for the Defense

The participation of counsel for the defense occupies an important place in people's democratic procedure, and his procedural activities conducted from correct political and legal positions have a considerable significance for carrying out justice in the CPR. The right of the accused to have counsel is indissolubly bound to the totality of his rights in the trial. The participation of a lawyer contributes to the full and real implementation of his rights and is one of the expressions of democratism which characterizes criminal procedure in the new China. The counsel for the defense in people's democratic criminal procedure carries out a function of national significance. His task consists in defending the rights and interests of the accused which are guaranteed by law and at the same time aiding the court in an objective and all-sided trial of the case in order for the court to receive the full possibility of weighing and comparing facts which support the indictment or the defense of the accused and to pass a verdict which corresponds to the true nature of the case.[7]

Thus the counsel for the defense in Chinese criminal procedure is an agent of the accused and is at the same time an independent subject in the trial, aiding the judicial organs in their work. The lawyer's aid to the court is not limited by his activities in the court of the first instance. It is expressed in

particular also in the fact that the lawyer aids the court of the second instance in correcting mistakes permitted by the court of the first instance. Dozens of examples could be given, whereby the lawyer has aided in correcting unjust sentences by lower courts. For example Wu Han-huei was judged guilty of stealing state property and sentenced by the people's court of the lower level to two years imprisonment. The convicted man appealed twice to the people's court of the middle level against the court decision, but his appeals were in vain. When a lawyer entered the case he gathered supplementary materials and presented them to the court of the second instance where the case was reviewed and Wu Han-huei was pronounced guilty not of theft but of neglect of his professional duties, and therefore he was released from custody and meted out a punishment which did not include imprisonment.[8]

The counsel for the defense participates in the trial as a party. The legal signs of a party consist in the fact that a party formulates its demands before the court, has a definite interest in the trial and enjoys broad legal rights based on the principle of equality of rights. The interest characterizing the lawyer as a party in the trial is the public interest. He is directed to aid people's democratic justice and contribute toward carrying out the tasks standing before justice while defending the rights and lawful interests of the accused. The defense counsel in Chinese criminal procedure participates in the courts of the first and second instance in trying cases. After the sentence becomes valid the attorney can continue to carry out certain defense functions. He can lodge an appeal to consider the case and to protest the sentence to organs which have the right of protest in the procedure of sentence supervision for those sentences which have become valid. The defense attorney can also, after the sentence become valid, petition the court which has passed the sentence to study certain questions connected with executing the sentence, for example, the question of delaying the execution of the sentence.

One, two or more attorneys for the defense can participate in trials. Several attorneys can defend one defendant or various defendants. The participation in the trial of several defense attorneys is obligatory when the defense of one accused runs counter to the interests of the defense of another. An attorney can refuse to handle the defense before the trial begins, that is, he can refuse to take on the functions of counsel for the defense for a specific case. But

under no circumstances can he refuse to handle the defense during the trial, which would be a gross violation of the constitution of the right to defense. The attorney for the defense aids the defendant with his legal knowledge, his experience and knowledge of life. Therefore he is obligated to explain to his client the lack of grounds for his demands if there are such. But a lawyer should not reject his client's well-grounded requests in order not to create the impression that he is acting as judge. The court directs the process of the trial. For the defendant and the attorney for the defense, as for all other participants in the trial, the powers of the court, granted by law, are indisputable. However, the court should not limit the attorney in the correct carrying out of his obligations. In cases when the defendant or the defense attorney considers that the actions of the court are incorrect, that they infringe or violate the rights of the accused, the lawyer or the defendant can petition for this violation to be eliminated, and if it is not eliminated, to appeal the decision of the court to a higher court.

In his work the attorney for the defense cannot act against the interests of the people and socialist construction. Only proceeding from these interests can he correctly carry out the tasks before him. The attempt to remove responsibility from the accused at all costs, with truth or lack of truth, the loss of principles--these are impermissible phenomena in legal practice which have an injurious affect on the masses as to the newly developing branch of people's democratic justice. The attorney for the defense in Chinese criminal procedure carries out the defense of the defendant on the basis of the materials pertaining to the case and within a legal framework. To conduct the defense proceeding from the facts means that the defense attorney must present the evidence speaking for the accused and analyze them. To conduct the defense proceeding from the law means to bring forth legal grounds for the benefit of the accused, analyzing the correspondence between the established facts of the qualification of the crime, the gravity of the crime, etc.

If the evidence presented by the prosecutor to substantiate the fact of the commission of the crime by the defendant contains evidence which is incorrect in whole or in part, the attorney for the defense must use valid evidence and well-grounded arguments to prove this in order that the court may establish the innocence of the defendant or change the qualification to the advantage of the accused. However, if the crime has been

fully proved and substantiated and the passing of a sentence of guilty is inevitable, the attorney for the defense should strive to establish circumstances which mitigate the guilt. For example, in defending the defendant he should point out the purposes which directed the accused, the motives causing him to commit the crime, the methods and means for committing the crime, the harm and social danger of the defendant, the age of the accused, his behavior after the conviction of the crime, naturally only if there are actually mitigating circumstances existing. And under no circumstances should the attorney for the defense make up facts, distort them or lie. If the attorney cannot find reasons for basing any of his conclusions, he should not press them upon the court. He does not have the right to place facts or conclusions before the court once they have been rejected, if no supplementary material has been established.

If the attorney discovers that the defendant is stating facts incorrectly, he should attempt to convince the defendant to give truthful testimony, pointing his attention to the fact that honest repentance is a mitigating circumstance. If it is impossible to convince the defendant, the attorney should introduce only authentic facts and incontrovertible evidence, but in such a manner as not to harm the interests of the defendant. The defense attorney, in reference to his actions before the court, is not bound by the will of the defendant and determines his line of defense so that from his point of view it answers the tasks of people's democratic justice. Otherwise the actions of a lawyer at court could change from aiding justice to opposing it, which would be a gross distortion of the tasks of the defense. However, the independence of the attorney should not be understood to be completely indifferent to the position of the defendant. The independence of the lawyer before the court should aid in correctly forming the defense in a specific case, but it should not signify direct or indirect, open or concealed refusal of the lawyer to defend his client. The attorney should use all lawful means for defending the accused and for alleviating his position. The court hearing is particularly significant for the attorney for the defense. Although the work in court is merely a continuation and completion of the case for the procurator who has conducted the preliminary investigation, for the lawyer, who has not participated in the preliminary investigation, the work begins only here.

People's democratic criminal procedure creates all conditions for the active participation of the defendant

and his counsel in the court hearing. The attorney for the defense, participating in the court hearing, actively verifies evidence, questions the defendant, witnesses, experts, etc. The counsel for the defense is obligated, within the framework determined by his legal position, to present evidence which refutes the charges. In this respect his position differs from the position of the accused who has no such obligation. The question of evidence supporting the defense, which is not being used in the case, but which can be established by summoning and questioning new witnesses, the implementation of new expert examinations, introduction of new evidence can come up before the counsel for the defense in studying case materials, in talking with the defendant, etc. In such cases the counsel for the defense takes measures under established procedure to have this evidence presented to the court. Courtroom debates sum up the hearing and contain the grounds for all conclusions, which according to the convictions of both parties involved, should be arrived at by the court in coming to a decision. The procedure of debates by the parties establishes that the attorney for the defense shall speak last. If there is no attorney, the defendant speaks for himself. In his speech supporting the defense the lawyer evaluates the facts established during the trial, criticizes certain evidence, demonstrates the credibility of other evidence, lays out the facts of the event which has taken place as he sees it, and presents his version of the case. In this manner the counsel for the defense aids in the establishment of truth.

3. Preparatory Part of the Trial[9]

The trial is the central stage of Chinese criminal procedure, where the court, with the participation and aid of the parties, examines the case according to the principles of publicity, verbality, directness, judges the case on its merits and brings forth a decision to adjudge the defendant guilty or not guilty. In Chinese people's democratic procedure the trial is based on the principles of socialist democratism. Two merging tasks stand before the trial, and these are the following: To judge the case correctly according to its merits and to achieve the most satisfactory social-educative result. The political significance of a trial consists in the fact that the court, as an organ of the state, gives in its sentence a social-political evaluation of the acts and person of the defendant. This evaluation represents a concrete form of state policy. The purpose of the trial

is not limited, however, to passing judgment. This stage of the process is constructed in such a manner that the educative effect on the citizenry will be as great as possible. Court trial is a creative process of examining a case to be conducted in certain procedural forms which differ from those which were used in studying and verifying the case in the preceding states. This section of the process takes place publicly, exerting an educative influence on the participants in the trial and on all those present. "In all its activities the court educates the citizens in the spirit of love toward their native land and conscious observance of its laws."[10]

The main goal of the trial is to arrive at a legal and well-founded decision on the basic question of the criminal case: On the guilt of the person on trial. This stage of the process ends with the evaluation by the court of all evidence and the proclamation of the sentence against the defendant and the measure of punishment or his innocence. The sentence of the court, upon becoming valid, is law and must be executed unconditionally and exactly by all organs of the state which have relation to it. In indicating that the trial stage completes the process, one should not forget that after the sentence is passed the case can be reviewed by an appeal court or within the procedure of judicial supervision. However, these stages are merely a verification or check of a sentence which has already been passed. The study of the case according to its merits and the basic work in resolving its most important questions take place during the trial stage in court of the first instance. The trial is a complicated system of legal actions by the court and by the parties to the case. In accordance with the content of the procedural acts comprising it, it breaks up into six parts: 1) the preparatory part; 2) the court hearing; 3) pleadings by the parties; 4) the final word by the defendant; 5) passing of the sentence; 6) reading of the sentence.

The preparatory part of the trial is, in the first place, a total of those preparatory acts in verifying the possibility of convening the court session to try the case, and, in the second place, definite actions by the court and by the parties to assure a complete and correct court hearing. Before the beginning of the trial and the entrance of the members of the court into the courtroom, the trial secretary calls the participants of the trial from the waiting room, if the court has one, through two militia men who have been assigned to this case: the procurator, the counsel for the defense and the defendant, witnesses, experts, other persons in-

dicated in the bill of indictment. In order to summon the participants to the trial the secretary hands the militia men forms with the seal of the court, upon which are written the names of the persons to be summoned. Then the secretary allows all those wishing to be present during the trial to enter the court room. If the court has no waiting room, the secretary simply ascertains whether those persons whose participation is obligatory have arrived. But these acts by the secretary do not replace the acts of the acting chairman in establishing the identity of those persons present for participation in the trial. On the right of the court the attorney for the defense sits behind a special table and beside him sit the defendant and civil respondent (if he is participating in the case). To the left of the court, also behind a special table, the procurator and civil plaintiff sit. The secretary of the court session sits behind the judges' stand to the right. Two militia men are placed in front of the stand, and they move constantly throughout the courtroom session and are used by the acting chairman to summon persons for questiondng, presenting documents and material evidence to the parties, etc. These militia men also guard the defendant. If there are several defendants, and the measure of suppression has been designated as armed custody, special guards are furnished, and the two militia men are at the disposal of the court. There is a card in front of the judges, parties and secretary which indicates who is sitting where. These indicators were introduced in order that the persons present would have a greater possibility of acquainting themselves with the court and achieve a picture of the activities of each person participating in the trial. After all have taken their places, the secretary of the court session, if necessary, announces the rules which are to be observed by those present in the courtroom. Usually one of the audience requests the secretary to explain how to behave in court, or the secretary takes the initiative, seeing any violation on the part of those present, and explains the rules of behavior in court.

After all these preliminary acts conducted by the secretary of the court session, the court enters. From this moment the preparatory acts of the court begin, which are connected with the examination and solution of several procedural questions, which are pre-conditions for the following main part of the trial--the court inquiry. After the court has entered the courtroom, the secretary reports to the acting chairman the names of those persons summoned who have appeared, those who have

failed to appear and on what grounds. The chairman announces the session as open and announces the case to be heard. On the basis of the report made by the secretary on the appearance of persons in court, the chairman establishes the presence of the parties and their representatives. If the defendant had not appeared, the hearing is put off to another day, and the court summons the defendant once again or arranges for his forced appearance. At the same time the court resolves the question of changing the measures of suppression against the defendant who had not appeared and issues documents providing for the forced appearance of the defendant. Cases cannot be tried in absentia in the courts of China.

Upon non-appearance of the counsel for the defense in cases where his participation is obligatory or when the defendant has engaged his services, the counsel for the defense can be replaced by another attorney with the direct consent of the defendant, or the case can be heard in the absence of the defense attorney, if the defendant agrees to do without him and states that he will handle the defense himself. However, in this case any direct or indirect pressure on the defendant by the court is impermissible. If the defendant insists on the participation of a lawyer, the court must insure his appearance or delay proceedings. In the case of non-appearance of the prosecutor in cases of public prosecution and in cases whereby the prosecutor was summoned by the court, the court is required to take all measures to insure the participation of the prosecutor in the trial. The court has the right to resolve in court session the question of the possibility of hearing the case without the participation of the prosecutor or of delaying the case to another date if the participation of the prosecutor is obligatory.

Non-appearance by the civil plaintiff and civil respondent, if the latter is not the defendant, does not hinder the proceedings. The civil action is not dismissed, and the functions of the plaintiff are carried out by the procurator. If the procurator is also absent, the court itself must examine the civil action. But the court may also make a decision on postponing the hearing if the civil plaintiff and civil respondent have not appeared. The chairman announces the name of the defendant, his age, profession, and asks him if he had ever been convicted previously. The chairman also questions the defendant as to the time of receipt of the copy of the bill of indictment by the defendant, establishing the exact time of delivery. The copy of the bill of indictment should be delivered to the accused

no later than 72 hours before the day of the hearing. The rule on the time of delivery of the copy of the bill of indictment to the defendant is of a categorical nature in Chinese criminal procedure. Therefore, if the copy of the bill of indictment was not delivered to the defendant at all or delivered subsequent to the deadline, the hearing is postponed to a suitable date. Having established the identity of the defendant, the chairman explains the rights of the accused during the trial. This is an important moment in the preparatory part of the trial. The explanation to the defendant of his rights has the significance of actually securing him the possibility of using these rights, therefore this explanation is conducted in a form comprehensible to the defendant, with consideration for his cultural level, and he is told in detail what he may do during the trial and what methods he may use in conducting his defense. Then the chairman announces the composition of the court, the names of the secretary keeping the proceedings of the court session, the experts, interpreters and procurator. He explains the right of challenge and asks the parties if they have any challenges to make. Challenging the attorney for the defense is unknown in the practice of judicial organs, and the grounds for challenging judges, procurators, and other persons are not valid in respect to the counsel for the defense.

A petition from one of the parties to remove a judge is decided by the chairman of the court. Petitions to remove the secretary are decided by the judicial college trying the case. A decision to reject a petition cannot be appealed. In the interests of a succesful trial the judge, people's assessors and secretary, if they consider themselves not completely disinterested in the case, give their opinion on their own removal at their initiative. A decision is made by the chairman of the court or the court. The chairman verifies as to whether the summoned witnesses and experts have appeared at court. The chairman ascertains the name, age, place of birth, residence and profession of all witnesses and experts, after which he warns them of the consequences of perjury and explains their civil obligation to give truthful testimony. Upon establishing identity of the witnesses and experts the chairman ascertains their relationship to the parties, other witnesses and experts in order to remove persons from the trial who have a relationship with one another which might complicate the trial. If the court finds that the removal of these persons is not expedient, the judges will realize their interest in the outcome of the trial

and will be able to orient themselves more correctly as to their testimony and statements.

The secretary collects the signatures of those who were warned against perjury but these signatures are not essential. The witnesses thereupon exit to a special room to wait to be summoned to the courtroom, and the experts remain in the courtroom. In case of non-appearance of witnesses or experts the court must resolve the question of the feasibility of hearing the case in the absence of those who did not appear. For this purpose it hears the opininns of the parties, after which it passes a decision on the continuance of the hearing or postponment. If the case is to be tried on another day, the court, depending on conditions, determines the time and place of the trial and once more sends out summons and written notifications. The court can force witnesses who have not appeared to appear at court. If there is a person in the case who has suffered loss due to the crime committed, the chairman explains to him his right for civil action. If the victim declares the intention to bring action, the declaration is included in the trial record and the court resolves the question of recognizing the victim as a civil plaintiff and on allowing him to participate in the case as a party to the case. The chairman thereupon asks the parties whether they have petitions to summon supplementary witnesses or experts and to obtain supplementary evidence. Each petition by one of the parties must be well founded and is discussed by the court separately, after the other party has expressed its opinion on the petition. Acceptance or rejection by the court of petitions by the parties is not dependent on any formal period of time. The parties may lodge petitions throughout the length of the trial, up to the point where the court retires to pass judgment and the court is obligated to consider these petitions. If the court is of the opinion that the petitions are well founded and it is necessary to postpone the trial in order to comply with the petition, it postpones the hearing and gives orders to summon witnesses or experts or secure supplementary evidence. This completes the preparatory part of the trial, and if there are no obstacles hindering the continuation of the court session, the court proceeds to the following part of the trial--the judicial investigation.

4. Judicial Investigation

The interests of people's democratic justice require that objective truth be established in each criminal

case tried by the courts and that a correct and well-founded sentence be passed in accurate correspondence of the law. All legal actions, the entire system of legal forms and institutions and the organization of the trial are subordinate to this goal, and serve as a means for its attainment. The judicial investigation is particularly significant in this respect, since it is the key, central part of the trial. The basic work in verifying and studying all evidence collected on the case during the preliminary investigation as well as that presented by the parties or obtained by the court on its own initiative is done at the judicial investigation. Here the judges listen to direct testimony by defendants and witnesses, acquaint themselves with all evidence pertaining to the case, verify the correctness and foundation of the indictment brought against the defendant, and on the basis of all this they pass a sentence in which the basic question of the criminal case is resolved--the question of the guilt or innocence of the accused and the degree of his responsibility for the crime committed.

The democratic principles lying at the base of the judicial examination afford the court broad possibilities for a comprehensive study of the circumstances of the case, in order to pass a correct, just sentence. The judicial examination in Chinese criminal procedure has a great educative significance, which is assured by the objectivity of the judicial investigation, which means that the court verifies not only evidence for the indictment but for the defense. It is also assured by a comprehensive study of the circumstances of the case, by the elimination of substantial contradictions between evidence or by ascertaining the reasons for these contradictions, as well as purposeful, logically consistent questioning. The judicial investigation is a graphic and intelligible form of bringing out the reasons, conditions and circumstances of the crime and the incrimination of the guilty party. The educative effect of the judicial investigation increases by an exposure of the conditions which aided in the commission of the crime and an exposure of the methods of the criminal activities.

During the judicial investigation, the court with the activ e participation of the parties, verifies all evidence collected for the case as well as the correctness and validity of the conclusions made on the basis of this evidence by the organs of preliminary investigation. However, the tasks of the judicial examination are not exhausted with this. Judicial examination is a new, completely independent investigation which possesses

several significant advantages in comparison with the preliminary investigation. Conducting an investigation of the case, the court cannot limit itself to the simple verification of the materials of preliminary investigation. If it is established during the judicial examination that any circumstance significant to the case has not been clarified at the preliminary investigation, the court is obligated to take all measures possible in order to elucidate this circumstance, for the purpose of which it can summon new witnesses, obtain documents, give instructions for expert examinations, etc. The judicial examination, being an extremely important part of the trial, is composed of several legal acts which are conducted in a definite order. Judicial investigation begins with the reading of the bill of indictment. If the case has been initiated by the procurator's office and the indictment is being supported by a representative of the procurator's office present at the court session, the bill of indictment is read by the judge or by a people's assessor appointed by him, or by the procurator. As for cases in which the procurator does not participate at the court session, or cases of private prosecution tried by the college, the bill of indictment or complaint is read by the judge or one of of the people's assessors, named by the judge. After the reading of the complaint, in a private prosecution case the judge asks the victim if he has anything to add to the charges listed in the complaint. The acting chairman thereupon explains to the defendant the main points of the charges and asks the defendant if he is in agreement with the indictment, that is, if he pleads guilty or not guilty.

During this stage the defendant is once more explained his legal rights. The acting chairman asks the accused if he wishes to present new evidence to the court which refutes the charges, in particular, if the defendant wishes to petition new witnesses to be summoned. The court thereupon resolves the question of the order of examining the evidence and the sequence of questioning accused and witnesses. As a rule, the defendant is questioned first if he pleads guilty. If the defendant does not plead guilty to the crime, the witnesses are questioned first. If there are several defendants and witnesses they are as a rule questioned separately, in the absence of the other defendants and witnesses. The questioning of the defendant occupies a central position in the judicial investigation. During the course of questioning the relationship of the defendant to the charges is ascertained, since

confession of guilt and sincere repentance by the accused are considered to be mitigating circumstances. In addition, the questioning of the defendant has the aim of obtaining evidence. In the courts of the CPR two procedures of questioning the defendant exist, depending upon the decision taken by the court: 1) the procurator begins the questions, followed by the civil plaintiff, the counsel for the defense and other defendants, after which the defendant is questioned by the chairman and people's assessors; 2) the defendant is first questioned by the chairman and the people's assessors, and subsequently he is questioned by the procurator, the civil plaintiff, the counsel for the defense and other accused.

The questioning should be conducted in such a manner that the accused has an opportunity at the very beginning to tell the court everything he considers necessary, after which he is questioned. If the defendant includes in his testimony anti-state declarations or censorable expressions, the acting chairman is required to stop him and conduct further questioning in the form of questioning in the form of questions and answers. The chairman possesses the right to exclude questions and answers which do not aid in coming to the truth in the case. If there are several defendants, they are questioned separately and in case of divergent testimony the court can arrange for confrontation of the defendants. After the questioning of the defendant the court begins to question the witnesses and experts. The testimony of witnesses is one of the most common types of evidence in Chinese criminal procedure. Judicial practice knows of no criminal cases in which testimony by witnesses did not figure as evidence. Testimony by witnesses plays a great part in establishing persons guilty of committing crimes, in ascertaining actual relationships between participants in the trial, in the establishment of reasons and motives forthe crime as well as for the elucidation of several other circumstances necessary for a correct decision in the case. Often testimony by witnesses forms the basic evidence, on the basis of which the court draws its conclusions on the case and passes sentence. Questioning witnesses in court is a legal act consisting in obtaining from witnesses information on circumstances which have a material sigficance for a court decision on the case being tried. By means of questioning the court and parties have the opportunity to learn from the witness everything they know concerning the case, to obtain definite information necessary for ascertaining the correctness of his testi-

mony, and to incriminate him in perjury in cases when the witness gives false testimony consciously. In other words, the questioning of witnesses is a legal means by which the court and the parties obtain indications of facts which must be established in the case and verify the validity of his testimony. The questioning of a witnesses begins when the acting chairman requests a witness to relate everything he knows about the case, after which the witness is questioned by the party which has called him as a witness. The judges question the witness after he has been questioned by the parties, but they have the right (the chairman--directly, and the people's assessors--with the consent of the chairman) to question the witness at any point in the questioning. After the questioning of the witness the chairman asks the defendant if he is in agreement with the testimony given and whether he wishes to make any explanations pertaining to this testimony. The parties have the right to ask additional questions of the witness or question him once more on specific points. An expert has the right to question witnesses, but only in connection with the extra examination made by him for the case. During the questioning the witness can make use of a text preparad ahead of time or make use of other written materials and documents. Each witness is questioned separately, and after the questioning, on the instructions of the chairman, either remains in the courtroom or is removed to the witness room. If the testimony of witnesses contains contradictions, the court can order confrontation of the witnesses. Confrontation can be conducted by the court also between defendant and witness. During the judicial examination the testimony of absent witnesses, which was given at the preliminary hearing, must be read, as well as testimony which was introduced in the record of other courts by individual demand.

Experts are summoned to court in cases when a question arises in trying a case, the resolution of which requires special knowledge in a suitable field of science, art or craft, as well as in cases when the expert examination was conducted at preliminary hearing. In the latter case the expert must verbally deliver his conclusion to the court. The rights of the expert in the judicial examination are considerably broader than the rights which he possesses in the stage of preliminary investigation. The expert has the right to attend the trial throughout the judicial examination, can participate in questioning the defendant and witnesses, in the inspection of material evidence and the scene of the crime, can voice his comments and conclusions, become acquainted

with the materials of the case to such degree as is necessary for him to form a conclusion. During the judicial investigation the expert is required to give his conclusion verbally, after which the court and the parties may interrogate him or ask him certain questions in order to elucidate his conclusion. The conclusion of the expert, as any other piece of evidence, is evaluated freely by the judges on the basis of the objective examination of all circumstances pertaining to the case as a whole. This evidence is not compulsory for the court, and therefore in case of lack of agreement with the conclusion of an expert the court has the right to summon a new expert. If additional time is necessary for the new expert to come to a conclusion, the court may postpone the hearing. If one of the parties has a valid reason to protest the expert examination, the court must resolve the question of summoning new experts, and, if this is necessary, also to postpone the hearing. During the judicial examination the conclusion of an expert who has not appeared can be read, if the parties do not object to this and if it is impossible to secure the presence during the court session. If the court decides to fix a new expert examination, this is conducted by newly appointed specialists or experts sent from the office of technical expert examinations of the organs of public security. Before the expert examination the experts are explained the requirements for the expert examination. The experts are furnished with all materials necessary for the examination. The experts also have the right to demand an explanation of the nature of the examination and to demand the necessary materials. The defendant has the right to participate during the expert examination and question the experts, who in their turn may question the defendant and the witnesses.

The expert examination can be conducted in the absence of the defendant: a) if the defendant cannot appear, for example, if he is at liberty and lives far from the place where the examination is being conducted, because of which he cannot come to the examination; b) when the defendant is not permitted to appear at the spot where the examination is taking place, for example, in cases whereby the expert examination takes place in the office of technical expert examinations of the Ministry of Public Security. In such cases, after the experts have submitted a written conclusion and have placed their signatures or seals, the people's court must inform the defendant of the results of the examination. If there are any documents in the case, the con-

tents of which are significant, they are read during the judicial examination. Material evidence is examined by the court and by the parties. In court practice sometimes the necessity arises to inspect the scene of the crime in order to ascertain circumstances not cleared up during the preliminary investigation. With this aim im mind the court can go to the scene of the crime and continue the trial there, after which the trial is terminated in the courtroom. At the end of the judicial examination the acting chairman asks the parties if they have any thing additional for the judicial examination. At this moment, upon valid requests by the parties the clerk may extend the judicial examination in order to examine and investigate additional evidence furnished by the parties or in order to verify valid requests by the parties.

During the process of examing evidence, new circumstances may become known which were not known during the preliminary investigation and which change the actual and legal composition of the charges brought against the defendant. In addition other persons may be uncovered who must bear responsibility for the crime committed. In such cases the court is faced by the necessity of changing according to established procedure the indictment read originally against the defendant and to bring it into correspondence with the results of the judicial examination. In the resolution naming the accused and in the bill of indictment, those conclusions are formulated which were arrived at by the organs of investigation for each specific case. These conclusions which formulate the charges of a specific person of committing a crime and which contain the legal qualification of the crime are not rigid and formulated permanently. During the examination and investigation of the case these conclusions can be changed. If during the course of the trial circumstances are brought out which are not reflected in the indictment, the court must change the indictment to correspond with the new circumstances. The right of defense of the accused determines those legal consequences and that procedural route which is followed by the trial as a result of the change in charges. Therefore in case of a change in the qualification of the crime to a more severe or even not more severe but substantially different nature of the charges, the court orders that the case receive additional investigation in order to prevent new charges against the accused. If during the trial one of the charges is dropped the defendant must be cleared of this charge. If the original charges are not proved and it comes out that the

accused has committed another crime, the court clears the defendant of the original charges and institutes criminal prosecution against the newly discovered crime and turns the case over for investigation.

If during the trial session it becomes evident that the defendant has committed another crime besides the crime for which he is being prosecuted, the question of the further fate of the case is decided in the following manner. If the new charges and the original charges are not closely connected, the court orders a new indictment, if it recognizes it as necessary to conduct preliminary investigation on the new charges and if the new charges carry more serious punishment than the original charges. In case the new charges are closely correlated with the original indictment, the case is sent by the court for additional investigation only if the new indictment requires preliminary investigation. In certain cases the necessity arises to change the original formulation of the indictment in view of the fact that during the course of the trial circumstances become evident which indicate the incorrectness of the original formulation of the indictment. If the formulation of the indictment changes to a more severe one, the court can take the initiative of sending the case for further investigation, or this can be done on the petition of either of the parties. If the formulation of the indictment becomes less severe, the court continues to hear the case and passes sentence according to the new formulation of the indictment. However, in case of substantial changes in the original formulation of the indictment, the court sends the case for further investigation in order to present new charges against the accused in view of the fact that new circumstances have been revealed which demand careful investigation and that the defendant has not cared to defend himself against these new charges. If the charges do not change substantially, the court continues to try the case and passes sentence according to the new formulation of the charges, since the defendant , under such a change in the charges, has an actual opportunity to defend himself against the new charges. If there is no basis for recommencing the judicial investigation or for returning the case for additional investigation, the judicial examination is terminated after the questioning and examination of evidence, and the court proceeds to the following part of the court session--the arguments by the parties.

5. Arguments by the Parties

Judicial practice has established the following sequence in the arguments by the parties. The prosecutor speaks first, the civil plaintiff or his representative, followed by the counsel for the defense, and if he does not participate in the case, the defendant gives the arguments for the defense. If as a result of the arguments by the parties new circumstances are brought to light which could influence the court of the trial to a great extent, the court can stop the arguments and reconvene the judicial examination or stop the trial and send the case for supplementary investigation at the stage of preliminary investigation. A petition to stop the arguments can be initiated by the parties in the case. Courtroom arguments form a summation to the judicial examination and contain the bases for the conclusions, which in the opinion of the parties should be taken by the court in passing judgment. All questions which arise before the court in passing sentence, the answer to which will appear in the verdict, should be evaluated in the final arguments and be subjected to analysis. The aim of the final arguments is not only for the procurator or attorney to present his point of view and his conclusions in the case. The procurator and the attorney strive to demonstrate the correctness of their conclusions in their final arguments, and to demonstrate their validity, to convince the court. The arguments given by the parties, particularly the speech supporting the prosecution by the procurator, have a great educative effect on the citizens. The educative effect and convincingness of the speech given by the procurator - state prosecutor are achieved by its well thought out content, its political tendency, its logical development , the compatability of the separate parts, the clarity of the theses expressed, reinforced by the evidence in the case and strict objectivity. The arguments of the prosecution are not the only ones with educative significance, for the same effect is caused by a well-motivated, valid rebuttal by the defense. The speech given by the counsel for the defense, if it is well constructed, also plays an educative role, since the attorney in the people's democratic process should always defend not a crime, but the accused. The arguments for the prosecution given by the procurator have a great social-political and legal significance. This significance is determined by the following goals before the procurator during trial: to demonstrate to the court the validity of the charges being supported

by him, to mobilize the workers to combat crime and to elucidate the laws and the educative effect of the laws both on the defendant with the aim of re-educating him and on those persons present in the courtroom, demonstrating to unstable elements the inevitability of exposure and punishment of a criminal, instilling them with the consciousness of the necessity of strictly observing the laws.

The nature of these tasks gives a clear picture of the tremendous social-political significance of the arguments summing up the prosecution by the procurator and on the part played by him in criminal action. The summation speech of the prosecution by the procurator is always a responsible political act. The basic concept of the summation speech of the prosecution is comprised of the circumstances of the case being tried. The procurator depends in his speech only on facts and suggests situations only on the facts examined during the trial. In addition the conclusions drawn from the facts, which are used as a basis by the procurator, should be well-founded legally and be in complete accord with the requirements of the law. The procurator's speech is an accusing speech, an aggressive speech, permeated with political content. The content and form of the procurator's speech are determined by the concrete peculiarities of the case being tried before the court. Since the content and structure of the speech by the prosecution are dependent on the peculiarities of each criminal case, criminal procedure in the CPR has no constant, exhaustive scheme for the procurator's speech, however, the general common nature of the problems of the procurator in supporting the state indictment in any criminal case and the distinctiveness of the features of the speech of the prosecution as a public act, makes it possible to outline the basic elements which are the most common in the speech by the procurator supporting the indictment. These basic elements are the following: 1) a summary of the factual circumstances of the case, an analysis of the evidence collected in the case and their evaluation; 2) an analysis of the most important reasons for committing the crime; 3) an evaluation of the political significance of the case and the crime; 4) a characteristic of the person of the accused, his degree of public danger, indications of the possibility for rehabilitating the defendant; 5) the legal qualification of the crime; 6) the measure of punishment which the procurator considers it possible to apply; 7) an opinion on the possibility of satisfying a civil complaint (if there is such in the case) and introduction of evidence supporting

that which has been stated.

The procurator gives the indictment speech in cases whereby the judicial examination has brought him to the conviction that the charges against the defendant have been proved in full measure. If the results of the judicial examination have not confirmed the indictment in whole or in part, the procurator must refrain from the indictment in full or in part, which has not been confirmed during the judicial examination. The order of arguments does not change in case the procurator retracts the indictment. The refusal by the procurator to make the indictment, usually accompanied by due motivation, does not free the counsel for the defense from the obligation to give his speech for the defense, for the court is not bound by the conclusions of the procurator and can, in spite of the refusal of the procurator to present the indictment, pass a verdict of guilty. After the procurator the civil plaintiff speaks, if there is one participating in the case. The plaintiff submits a petition to satisfy his suit, based on evidence examined during the judicial examination. But he does not have the right to deal in questions of the guilt of the accused and the degree of punishment, which must be determined by the court. The tasks and goals of the speech of the defense are indissolubly joined with and directly proceed from the problems and goals of the defense in criminal procedure. The speech by the defense combines the obligation of the counsel for the defense to the defendant with his role in the implementation of people's democratic justice. The task of the counsel for the defense, carried out by him in the speech of the defense, is in full accord with the tasks of the court. The people's democratic court does not allow verdicts of guilty to be made without exhaustive evidence of guilt which go beyond a shadow of a doubt. The counsel for the defense also has this goal. The attorney does not seek to get a guilty criminal off the hook, when there is no doubt as to his guilt. The defense attorney cannot attempt to violate laws, to influence the court to apply laws incorrectly, to apply law which should not be applied only because this law would free the defendant from punishment. There can be no contradictions between the tasks of the court and those of the counsel for the defense in a correct social-political evaluation of the trial. All the facts and evidence are examined in the defense counsel's speech from the point of view of the interests of the defendant, and everything which speaks in favor of the accused and which refutes the charges or mitigates the

guilt of the defendant is extracted from the circumstances of the case. After the arguments, the parties have the right of rebuttal. The procurator gives a rebuttal speech, directed against the speech by the counsel for the defense or the speech by the defendant if he was defending himself. In case the counsel for the defense or the defendant consider it necessary, they may answer the rebuttal by the procurator. It is difficult to enumerate all cases whereby the parties can exchange rejoinders. This is possible, for example, when the attorney or the defendant have incorrectly thrown light on the significance of the criminal case or have allowed other political errors in their speeches; when the merits of the case have been distorted, or whether individual factual circumstances having a considerable bearing on the case have been distorted; when the attorney or the defendant, incorrectly analyzing the make-up of the crime, come to an incorrect conclusion on the juridical qualification of the acts committed by the defendant; when the counsel for the defense or the defendant grossly distort the basic regulations of the science of criminal law in their speeches. Naturally the circumstances of each concrete case, the peculiarities of its trial can cause the necessity for the parties to make rebuttal. Neither legislation nor judicial practice have established a time limit for the arguments as a whole or for the rebuttals of each party. During the course of the trial the court does not allow persons who are present in the capacity of onlookers to speak. If anyone of them has anything to say on the case, he can transmit it to the court in verbal or written form after the court is adjourned.

6. Final Word by the Defendant

After the announcement ending the arguments the acting chairman gives the defendant the final word. The defendant gives the court a statement directly before the court leaves the courtroom to reach a verdict. The declaration by the defendant at this point has a great procedural significance, since it gives the court the opportunity to ascertain the relation of the accused to the results of the judicial examination after the judicial examination and the arguments by the parties, and it gives the court the opportunity to learn of his evaluation of all the evidence examined by the court, his attitude to the charges and to his deeds. The defendant is not limited in time and can say everything

he considers necessary to bring to the attention of the court. Neither the court nor the parties have the right to interrupt the declaration of the defendant nor to give him any instructions. If the prosecutor considers it necessary he may give a rebuttal to the speech of the defendant, after which the defendant may once again have a final word. As a rule the procurator gives the rebuttal on the final word by the defendant only in rare cases. This happens in cases of coarse, slanderous attacks by the defendant against the state, obvious distortion and twisting of the facts in the case, coarse defamation of persons participating in the trial, etc. After the final word by the defendant the court leaves the courtroom in order to pass sentence.

7. Passing the Sentence

The passing of the sentence, which is the result of the trial before the court, is an extremely important part of the trial. Being an act of people's democratic justice, the sentence has not only a great social-political, but educative significance. The educative significance of the sentence by a court can be illustrated by the following examples. In the the first district of Kengshan county, in the village of Yaochiawan and other villages, in November 1954, during the period of the grain purchasing by the government, due to provocation by a small band of Kulaks, the peasants were marking time, a fact which hindered the fulfillment of the tasks of procuring grain. After the sentence was published by the people's court in the case of a Kulak who had refused to sell grain, rural party workers conducted explanatory work among the masses and mobilized them for the sale of grain. Thanks to this, during the course of four days the lacking grain was completely sold in these villages. In addition the grain in the neighboring regions was bought up extremely rapidly. Many of the inhabitants of these districts had a satisfied reaction to the publication of the sentence, which was able to break the resistance of the reactionary Kulaks. The workers in a marketing-supply cooperative discovered the theft of cooperative property. The guilty parties were sentenced. In the sentence the people's court stressed primarily the malicious nature of the thefts, the goals which were pursued by the thefts, and the results of the thefts, indicating the fact that the cooperative management had been disorganized and that accounting in the cooperative was in an unsatisfactory state. After the publication of the sentence

in this case, the operations of cooperatives were thoroughly checked in many districts and in many marketing-supply cooperatives in the county. As a result of this more than 80 cases of embezzlement were exposed. All these facts of embezzlement were rapidly investigated and examined by the courts and this played a great role in improving the work of the cooperatives and in preventing further embezzlement and theft of property.

The sentence by the court is based on information examined during the court session, evaluated by the judges. The formulation of the convictions of the judges is the result of two parallel processes: the court forms a conviction in respect to the presence and validity of facts and at the same time in respect to the social-political and juridical evaluation of the crime and the person of the culprit. The evaluation of the evidence is made by the court in respect to the formula that "fact is a basis and law is a criterion." The sentence of the people's democratic court should answer the requirements of legality and validity. It should be well motivated and just. A sentence which is passed in observance of the law, based on a careful analysis of the evidence aids in strengthening people's democratic legality. Established objective truth is an inalienable quality of the sentence of the people's democratic court and is a component part in the broader conception of legality and validity of a sentence. A sentence will be legal and valid in such a case whereby the court correctly recognizes the factual circumstances of the case in their legal significance and correctly establishes their correspondence to that law or norm which must be applied. The recognition of objective proof in a criminal case, which is a continuous process throughout the extent of the criminal procedure, is subordinate to the same regular laws as the recognition of any other truth. The process of recognition, complex in its dialectical unity, has been formulated by Mao Tse-tung in the following manner: "Marxism-Leninism considers that the distinguishing features of two stages of the process of cognition consists in the fact that at a lower level cognition is an emotional cognition, and at a higher level it is a logical cognition, although both of these levels are levels of a single process of cognition."[11]

Analyzing the dialectical process of cognition from one level to another Mao Tse-tung notes that "The movement of cognition from the emotional to the rational takes place both in the process of minor cognition, as in the process of major cognition . . ."[12]

In applying this to court decision it means that, studying individual pieces of evidence, analyzing them, the court comes to a general conclusion in a given case, which is reflected in the sentence. The strict and rigid observance of legal norms at the stage of preliminary investigation, bringing to trial and at the trial stage also assures the achievement of objective truth in the sentence. In case truth is not established it is impossible to speak of the validity of a sentence. In addition, objective truth which is correctly established by the court but does not find validity in the sentence is not made generally comprehensible, and in the final analysis can lead to an incorrect conception of this by the public. Legality and validity of sentence are closely joined with one another. Only a just legal sentence can be called valid. Only a valid sentence corresponds to the requirements of the law. Motivation makes a sentence convincing and increases its educative effect, as well as making it possible for a higher court to verify the route followed by the court of the first instance in arriving at a given conclusion, in verifying the validity of the conviction of the judges who have passed the sentence. Legal norms are realized in the sentence which express the will of the people directed toward the construction of socialism. The sentence of a people's democratic court teaches the exposure of enemies and the struggle against the remnants of capitalism in the consciousness of the public. The sentence of the people's court in the CPR is an act which expresses the policy of the Communist Party and the government. Criminal procedure in China knows of two types of verdicts: a verdict of guilty and a verdict of not guilty. There is no third type of verdict, which would leave a person under suspicion. The court must decide the question of the guilt or innocence of a person in a sentence and must pass a sentence only under such conditions. A verdict of guilty is passed when it is recognized that the defendant is guilty of the charges brought against him. A verdict of not guilty is passed in the following cases: 1) if the fact of the crime has not been proved; 2) if the act which is the object of the bill of indictment is not a criminal act; 3) if it has not been proved that a criminal act has been committed by the accused; 4) if the statute of limitations has run out for criminal investigation; 5) if the accused cannot be subjected to criminal responsibility.

In cases when the court considers that certain circumstances of the case have been elucidated

insufficiently, or if new circumstances have been revealed in the course of passing sentence, the court must not pass a sentence but come to a decision with instructions how to proceed further with the case. In particular, the court may make a decision to reinitiate the judicial examination, and if this is insufficient the case can be returned for supplementary investigation from the preliminary investigation state. The procedure of passing sentence is not alike for all cases tried by courts with collegiate composition. Depending on the nature of the importance of the case training of the judicial cadres the court determines what cases should be decided directly by the members of the court trying the case, which of them should be passed with the participation of the chairman of the court or the chairman of the judicial college in criminal cases and in which of them the verdict should be reached at a session of the judicial committee.[13]

Practice has established that in cases in which the sentence can be no more than 15 years imprisonment, the judges trying the case pass sentence themselves. However, even in these cases if particularly complicated and involved cases occur, the court which tried the case can consult the chairman of the court or the college or ask that the case be examined by the judicial committee of the same court. If the verdict has been reached directly by members of the court trying the case, the court announces upon leaving the courtroom that the verdict will be made public immediately after it is reached in the conference room. This means that the trial process continues without a long interval. If the verdict of the court is to be discussed by the judicial committee, the court announces after the final word of the defendant that the verdict will be made public on such and such a date. In such cases an adjournment of the court session for several days is possible. During this period of time the judges participating in trying the cases have the right to try other cases. The procedure of conferring and resolving all questions in a case connected with the reaching of a verdict assures the independence of the court and the collegiate principle of decision. Besides the members of the court, nobody may participate in discussing the verdict. Generalization of judicial practice and the structure of the sentences passed by the courts makes it possible to establish an approximate list of questions which must be resolved by the court in reaching a verdict: 1) did

the act take place which was ascribed to the defendant; 2) did the defendant commit the said act; 3) does this act contain the features of a crime; 4) should the defendant be punished for the act which has been committed; 5) how is the crime qualified; 6) what punishment should be meted out to the defendant; 7) is one punishment to be given for several crimes; 8) is it necessary to sentence the defendant to supplementary punishment; 9) should the defendant receive a conventional conviction or should he receive punishment which is less than the lower limit; 10) how should questions be resolved which are connected with civil action brought; 11) how should stolen property and material evidence be handled.

Each of these questions should be resolved separately. This is essential because a negative answer to even one of the first four questions would make it impossible to reach a verdict of guilty. In reaching a verdict in the conference room, the secretary is present in addition to the judges and people's assessors. The secretary makes a record of the verdict. The record reflects the entire course of the discussion of the questions connected with the reaching of the verdict, and the results of the deliberation. The acting chairman directs the deliberation of the judges, and if the case is being examined in a judicial committee--by the chairman of the court. The chairman of the deliberations poses each question separately for discussion. Each question is studied and resolved according to the collegiate principle. None of the judges has the right to abstain from voting during the resolution of questions. During the deliberations all the judges and people's assessors possess equal rights and each of them has one vote. In order to come to a decision a majority of votes is needed. The opinion of the minority must be noted in written form in the record of the deliberations, and this makes it possible for the judges to express their own particular opinion on the case. In order that the opinion of the chairman of the deliberations not influence the people's assessors and judges, the chairman votes last. All persons participating in the deliberations and in the reaching of the verdict must sign the record of the deliberations, which is not read in court and with which the parties do not have the right to acquaint themselves. The record is included in the case together with the verdict. In the past the formulated method of formulating the verdict

in criminal cases tried by courts of the first instance were quite different in different places. At present the People's Supreme Court has proposed one definite verdict form for all courts.

The verdict of the people's court is passed in the name of the court trying the case and consists of three parts: the introductory (official) part, the description and resolution. In the introductory part of the verdict the name of the people's court is indicated and the type of verdict, as well as the number of the case. In the section on the person who has instituted court action, in case the proceedings were instituted by the procurator's office, the following is written: "State prosecutor" and the position and name of the procurator and the designation of the procurator's office is indicated; if the case is brought up by a private party--his name. If the private prosecutor is at the same time the civil plaintiff, the following is indicated: "The private prosecutor and civil plaintiff so and so," and otherwise the name of the civil plaintiff is indicated separately. In the section on the defendant the name of the defendant is indicated as well as his sex, age, birthplace, residence, origin, nationality, profession, and information as to whether the defendant had ever been convicted previously. If the defendant is at the same time the correspondent in civil action, this is not indicated in the introductory part of the verdict; if another person is the respondent, his name is indicated. After the data on the defendant appears the name of the counsel for the defense. Further on the time of the convening of the court session is indicated as well as the names of the judges in the judicial college, the name of the secretary keeping the record of the court session, and it is indicated whether the procurator was present as well as whether the trial was open or closed. The descriptive part--the "circumstances of the case"--should contain indications of the concrete act, time, place, motives and methods of committing the crime and the criminal results. If there are several accused the role of each defendant must be concretely stated. Proceeding from the necessity to motivate the verdict, the descriptive part must indicate the basis of evidence used by the court to arrive at a verdict of guilty or the acquittal of the defendant. An analysis of this evidence must be given. The law, decree or resolution to be applied must be indicated, or the court proceeds from the general state policy and indicates why it considers pun-

ishment necessary against the defendants. The court's attitude to the civil action must be indicated, and on the basis of what evidence and facts it refutes or supports this suit.

In the resolution section which begins with the words: "The people's court has sentenced . . ." the qualification of the crime committed by the defendant is indicated, as well as the punishment to be meted out, its length and date of commencement. If the defendant was in custody before the trial began, the period of preliminary imprisonment is included in the term of imprisonment. In addition, the section indicates as to whether additional measures of punishment are to be applied and what measures, or whether the court has decided on conditional* punishment or postponment of the execution of the sentence and for what period. If a civil suit is examined during the case, there is an accurate indication as to the decision taken by the court in the suit. It should be indicated how to treat embezzled goods or material evidence. Finally the procedure of appealing the sentence is indicated, that is, that in case of lack of agreement with the sentence an appeal can be made within 10 days and a copy of this appeal must also be included for the review by a people's court. The year, month and date of passing sentence are indicated. If the sentence has been passed by the People's Supreme Court the sentence indicates that it cannot be appealed. The verdict is signed by the judges (acting chairman) and people's assessors. Printed copies are made of the sentence to deliver them to the parties. These copies are certified by the court and note that "this document has been certified and is identical with the original"; in addition the year, month and date of the printing and certification of the copy are indicated. The signature of the secretary who made the copies and certified them is then included. A verdict of acquittal must indicate the bases for acquitting the defendant. The resolution section of this verdict must include the words that the defendant is innocent and acquitted by the court. The sentence must be politically consistent and clear in exposition. The descriptive and resolution sections of the verdict must be logically connected. The descriptive part must be followed logically by the conclusions made by the court in the resolutions section.

Both official documents and the press have indicated the necessity of reaching politically consist-

*/As used in this work, "conditional" usually means suspended/

ent and clear verdicts. In October 1955, the People's Supreme Court and the Ministry of Justice of the CPR sent all courts a report on the verification of work in passing and publishing verdicts by the people's courts of all levels in Kiangsi province. The letter accompanying this report went as follows: "It is necessary to indicate that all verdicts and other acts drawn up by the court are not only official documents of the court, testifying to the correct understanding, just and serious examination of any case, but a document in which laws find their application and thus the verdict has a great educative significance. This demands that the verdicts and decisions of the courts be absolutely reliable in respect to the facts of the commission of the crime by the accused and that the verdicts be politically valid and correctly written." The newspapers also demonstrated the harm brought by errors allowed to appear in verdicts due to their careless wording.[14]

8. Publishing the Verdict

The reading of the verdict is put into a special section of the trial because it has a very serious educative significance, and can take place not only in the courtroom. In addition, the reading of the sentence is connected with certain formalities. Courts may read the verdict directly after it is passed, but they can also appoint a definite time for this, that is, the verdict can be announced immediately or at another stipulated time. Verdicts which are examined by judicial committees are announced after the lapse of some time. The verdict can be announced both in the courtroom or elsewhere, if it is necessary to achieve greater educative effect: at a meeting at the scene of the crime, in organizations or enterprises, as well as at the place of residence of the convicted criminal. If the defendant is in custody, the announcement of the verdict can be delegated to the court on the territory of which the place of confinement is located. The procedure of announcing the verdict is the following. If an immediate announcement of the verdict has been decided upon, the verdict is announced directly after it is reached. The acting chairman reads the verdict, after which he gives a speech, explaining the content of the verdict, its juridical and political significance and the punishment meted out by the court, and he states the period and procedure of appeal in a form comprehensible to

the audience. In his speech the judge propagandizes the laws. If a final death sentence is announced, the judge must explain to the defendant his rights to petition that the case be reviewed. The judge must learn the opinions of the parties on the verdict. Then the defendant signs the verdict, or if he is illiterate places his fingerprint. In cases with an immediate announcement of the verdict, as a rule the verdict is delivered to the parties within five days after it is announced in the courtroom. If the court appoints a specific time for announcing the verdict, the procedure of announcing it is basically the same as the above with the difference that the judge who makes the verdict public must certify the identity of the defendant and other parties participating in the trial. The full text or the basic content of the verdict is read and the judge gives a speech in addition. In both cases the announcement of the verdict is formulated by a document which is signed by the chairman of the court and the parties concerned. Upon announcement of the verdict after a definite period has passed the verdict is also delivered to the parties within five days after it is announced. Upon receiving copies of the verdict in the courtroom the defendant and other persons receiving copies must sign a record of the announcement of the verdict. If the copies are delivered by a delivery boy the parties must sign for the receipt of these copies in the delivery boy's book. If the copies arrive by mail a registered mail receipt must be signed. If the persons for whom the verdict is intended are not present, the verdict is handed over upon the signature of relatives or neighbors of this person.

The chairman of the court may make certain corrections in the text of the verdict, however, the sense of the decision should not be changed. All persons receiving copies of the verdict are informed of these corrections. At the same time their copies of the verdict may be taken for correction. In cases whereby the verdict is announced outside the court, it can be delivered to the spot of publication by two methods: by a special court functionary, sent to the spot of the verdict publication, as well as by mail (in cases whereby the court which has tried the case instructs another court to announce the verdict at the place of residence of the defendant, at the place where he is imprisoned, the scene of the crime or where he works.) Under certain conditions the verdict becomes law for the case for which it was passed and acquires such

features as obligatory execution, irrefutability and exclusiveness. The verdict becomes valid only after the lapse of the period established for appeal, if an appeal or protest has not been submitted. If an appeal has been submitted the verdict becomes valid on the day the court of the second instance drops the appeal or protest.[15]

9. Simplified Court Procedures

Besides collegiate trial of criminal cases in the people's courts of China a form of simplified court procedures exists, when cases which are insignificant as to public danger are tried by judges without the participation of people's assessors. As a result of this procedure the activities of the court are facilitated, trial is sped up in these cases, and the court can concentrate its forces on the examination of complicated criminal cases. Simplified court action is undertaken in cases of private prosecution and for simple cases instituted directly at court on the initiative of institutions, enterprises and organizations, when the circumstances of the cases are clear and do not demand preliminary investigation. Simplified court procedures are allowed by law (Article 9 of the Law on the organization of people's courts) where it indicates that cases in the people's courts are to be tried by a judicial college, with the exception of simple, civil and insignificant criminal cases, as well as cases specially provided for by law. The question as to whether a case will be tried according to simplified court procedures is resolved by the court which has received the declaration of the crime committed. The chairman of the court or the chairman of the criminal case college appoints a judge to try the case. During the process of the pre-trial preparations for the case, the judge can carry out certain investigative acts to reveal and fix evidence. The participation of a counsel for the defense in cases of this category is not required, but if the accused insists on making use of an attorney, the judge is required to fulfill this request. The person against whom a declaration is submitted to the court, is handed a summons to court three days before the trial of the case as well as a copy of the complaint or declaration. The trial itself uses the same forms as with a collegiate trial of a case. During the trial the judge may find that the case is complicated and contains great public danger. In such a case the hearing is

terminated and the case is transferred for examination under normal trial procedure. In addition, in cases of private prosecution settlement of the case is possible in court or before the hearing begins, and this causes the case to be dismissed. The victim may submit a request or announce verbally in court that he requests the case to be dropped. The parties may independently settle out of court, before the hearing, and the court may arrive at a settlement between the parties during the court session. If the parties have come to a settlement out of court and have submitted a request to dismiss the case, the court is obligated to drop the case. If the settlement between the victim and the accused takes place during the court session, the court draws up a record on the settlement, the original of which is appended to the case and printed certified identical copies are handed to the parties. A case dropped on the request of the parties cannot be recommenced with the exception of cases whereby there are weighty reasons for this.

If the victim or the accused announces that he has discovered an error in the case, according to which settlement was reached, after it had been ascertained as to whether there was an actual error, the question is resolved in accordance with the procedure of judicial supervision as established in Article 12 of Law on the organization of people's courts. The chairman of the people's court, having revealed an error in a decision of a court which has become valid, in reference either to the establishment of facts or application of law, must transfer the case to be examined and decided by the judicial committee. Before the new trial the court may summon the parties for a second settlement. If the settlement does not take place a trial occurs. If no errors are discovered in the materials of the case and the request to renew the case, the case is not renewed and the parties are informed of the results of the check. A case heard by a single judge must be presented for the approval of the chairman of the court. After this the verdict may be drawn up and announced. The verdict is signed by the judge and the secretary of the court session who keeps the record of the case.

10. Court Ruling

Besides the verdict, the court may pass decisions in the form of rulings. A ruling is passed by the court basically in resolving procedural questions

during the trial of criminal cases. The rulings reflect the decisions of the court which are not connected with the establishment of the innocence or guilt of the accused. As a rule the people's courts of the CPR pass rulings on the following questions: 1) on replacing the composition of the court at the request of the parties; 2) on transferring the case to the jurisdiction of another people's court; 3) on sending the case, instituted at the request of citizens, state and social organizations, as well as institutions, to organs of the people's procurator's office or public security for investigation; 4) on sending the case for further investigation to the people's procurator's office; 5) on introducing corrections or additions to the sentence, if stylistic errors were made or anything was omitted; 6) on announcing the freeing of the prisoner before the term is up; 7) on the confiscation of the property of counter-revolutionaries, which was not expressed in the sentence, or the property of counter-revolutionaries and war criminals in cases where sentences have not yet been passed; 8) on refusal to review an appeal; 9) on dismissing a case where there is lack of criminal actions in the acts of the accused; 10) on satisfying a private complaint or refusal of satisfaction; 11) on lessening the punishment against the accused; 12) on bringing to trial, etc. The procedure of signing rulings is the same as that for verdicts. The ruling also indicates the period and procedure of appeal. Court rulings are appealed in the same procedure as sentences.

11. The Court Record

From the moment of the convening of the court session until the reading of the verdict, three records are kept in Chinese court: the court session records which are kept by the court secretary from the moment of the convening of the court session until the court recesses to pass sentence; the record drawn up in reaching a verdict; the record of the announcement of the verdict. From the viewpoint of evidence the greatest significance is given to the court session record, in which al l the acts of the court and the parties are noted, the entire course of the trial is reflected, all requests and petitions by the parties, all rulings by the court, the testimony of the defendant, witnesses and experts, the arguments by the parties and the final word by the defendant. The record is kept by the secretary with almost stenographic accuracy. After the

judges leave the court to pass verdict the record is read by the secretary of the court session or is examined by the parties, witnesses and other participants in the trial. If the verdict was not reached immediately after the trial ends, the court may inform the parties, witnesses and other participants of the opportunity to acquaint themselves with the records within three days after the adjournment of the court. If these persons, after having acquainted themselves with the record, notice incorrect entries, distortions of their testimony and statement, with the permission of the acting chairmen, corrections and additions can be introduced into the record.

After the reading or inspection of the record and introduction of corrections, the parties, witnesses experts and other participants in the trial sign the record or place a facsimile. In case any of them is illiterate or has no facsimile, their fingerprint is placed on the record. The protocol is then signed by the acting chairman. In case any person participating in the trial refuses to sign the record, a note is made in the record referring to the refusal to sign and the reasons for the refusal are noted. The practice of the courts of acquainting the participants in the trial with the record complicates the process somewhat. Immediately after the final word of the defendant, the secretary cannot present the record in a finished form and the reading of the record lengthens and delays the trial. Therefore, certain courts (for example, the people's court of the Hsuan-wu district, city of Peking) introduced procedure according to which the persons participating in the case could acquaint themselves with the court record within three days after the trial ended. In the process of the test application of two rules of acquaintance with the court record two opinions by court functionaries were expressed. Certain persons considered that the record should be read at the session of the court or examined by the parties and other persons, and also should be signed by these persons. In order not to delay the proceedings, the record can be read by the secretary or examined by the participants in the trial after the termination of the court session or during the recess, during which the verdict is formed. The other group considers that the acting chairman, at the end of the court session, before the court leaves to pass on a verdict should question the parties and other persons as to whether they wish to hear the record or check it themselves. After the record is read or after the

participants of the trial have acquainted themselves with it, these persons and the acting chairman sign it. Summing up the practice of the court and analyzing the opinions of judicial functionaries the People's Supreme Court of the CPR determined that the record would not be read at the end of the court session, but that within three days after the termination of the court session the parties and other participants in the trial would be able to acquaint themselves with the record of the court session and with the permission of the acting chairman, introduce suitable changes and additions to it. Exceptions are the testimony of witnesses introduced into the record. This testimony should be read or presented for perusal during the session and after examining it, the witness should sign it. Proceeding from concrete circumstances it was also determined that if those persons participating in the trial wish to acquaint themselves with the record, but are not able to read due to illiteracy, the secretary of the people's court is required to read the record to them. The record is signed only by the acting chairman and secretary of the court session.

CHAPTER FIVE

ACTION IN COURTS OF THE SECOND INSTANCE

1. Significance of Review of Sentences Which Have Not Come into Legal Force

A sentence which has become valid is obligatory for execution by all judicial, investigative and administrative organs, officials and citizens of China. The correct carrying out of justice presupposes accuracy of judicial repression, that is conviction and punishment only of guilty parties and only in accordance with the gravity of the crimes committed by them and the degree of their public danger. The incorrect conviction of honest citizens as well as the unlawful and unfounded acquittal of persons having committed crimes, causes great harm to people's democratic justice, undermines people's democratic legality and law and order. As the generalization of judicial practice demonstrates, the quantity of cases appealed decreases from year to year, and this testifies to the correct application of laws, the increase in the quality of case trial. Of the total number of cases tried by people's courts in the province of Yunnan for a period of three years (1954-1956), only 2.8% of all cases were appealed. In 1955 the number of appealed cases decreased 23.2% in comparison with 1953. In 1955 only 2.2% of all cases tried were appealed. In trying cases in the people's court a system of passing final decisions in courts of the second instance is implemented. The decisions and rulings which are passed by local people's courts of various levels can be appealed by the parties in accordance with procedure established by law to the higher people's court, and the people's procurator's office can, in correspondence with procedure established by law, protest them before the higher court.[1]

The system of court examination in two instances in which the decision of the second instance is final, corresponds to concrete conditions in the country and is caused by the great size of the territory of China and the lack of convenient communications in certain areas of the country. If there were a large number of instances, the interested party would be forced to appeal to higher judicial instances located at a comparatively great distance, as a result of which the judicial process would be delayed to great lengths, and the interested party would be forced to expend time and money in vain, as well as to stop its produc-

tive activities. The people's courts would be loaded down with unnecessary work in reviewing cases which had already been appealed and examined by courts of the second instance. All of this would be harmful to the interests of the people and the state. The establishment of a system of court examination in two instances fully insures the correct decision of cases. The procedure of reviewing sentences established by the Law on the organization of people's courts in the CPR has great significance for securing the suitable review of cases and for the timely exposure and correction of erroneous verdicts. The importance of this form of sentence review is testified to by the following figures: Of the cases of counter-revolutionary crimes tried by higher and middle people's courts during the first quarter of 1956 which were appealed or protested, no less than 40% were returned for retrial, more than 20% reviewed, whereby the punishment was lessened and about 3% were cases in which the fact of crime was absent.[2]

Together with the task of verifying the legality and validity of sentences, the higher court in Chinese criminal procedure also has the obligation of directing the court of the first instance and lending it concrete aid in order for the lower court to decide all criminial cases more rapidly and correctly. The tasks standing before the courts of the second instance determine the basic principles of the review of sentences which have not yet beco me valid*in people's democratic procedure of the CPR. These include the following: freedom of appealing sentences, the opportunity to present materials to the court of second instance, the revision of procedure of checking a case, the comprehensiveness of verifying sentences, the inadmissibility of worsening things by appealing the sentence of a person convicted of a crime, the obligation of the lower court to heed the instructions of the higher court, the right of the court of the second instance to introduce changes into a sentence which mitigate the position of the person convicted, and dismissal of a case without transferrring it to the court of the first instance for new trial. All of these principles are directed toward assuring a more correct and comprehensive verification of sentences which have not yet become valid.

2. Conditions and Procedure of Appealing and Protesting Sentences

*/In this work this has the meaning of coming into legal force./

In Chinese criminal procedure the sentences of all people's courts and for all categories of cases with a few exceptions, can be appealed and protested. Sentences passed by the Supreme Court acting in the capacity of the court of the first instance cannot be appealed. They are final and become valid immediately after they are announced.[3] Sentences passed by military tribunal of military districts are also immune from appeal. This is explained by the fact that at present military tribunals are not part of the general judicial system but are subordinate to the War ministry and possess no court which unites them on a country-wide scale. Therefore the military tribunals of the military districts are higher judicial instances for lower military tribunals.[4]

The resolution of the question of the form of an appeal or protest in Chinese criminal procedure testifies to the fact that the right to appeal a sentence can actually assure the lack of interest of the parties. In old China a special law was in existence which established the forms of petition and appeal. Article 6 of this law determined the content and form of the appeal, including six points: 1) name, sex, age, profession, occupation and address of the person making the appeal; 2) name of the institution which passed the decree or resolution; 3) the circumstances of the case and motives for the appeal and petition; 4) evidence; 5) designation of the institution which must examine the appeal; 6) year, month and date. Article 7 of the law provided that the person making the appeal, besides the original text of the appeal, simultaneously was required to present a copy of the appeal to the institutions which had made the decree or resolution. But the law was not limited to this, for it went even further, and in Article 8 a rule was stated according to which an appeal was returned with instructions to introduce suitable corrections if legal forms were not maintained. This law actually deprived the great majority of the population the right to appeal. This great majority was basically illiterate in old China and did not have the means to ask attorneys to draw up appeals. The requirement to observe a definite form in the appeal actually limited the opportunity to appeal sentences and was rejected in the people's democratic procedure of China. An appeal can be submitted to the people's court in any form. To the convenience of the parties the appeal can be submitted verbally in court, in the reception hall of which it is entered into the record, and the person making the appeal signs

the record, and if he is illiterate he places a fingerprint. The appeal can be written on the instructions of a citizen also in a legal consultation office. Upon appeal the party must make copies of the appeal for the persons of the opposing side, and transmit them to the court together with the appeal. However, the lack of an obligatory form of appeal does not include the protest of the procurator, which must be submitted in written form. The submission of protest is one of the basic legal means, with the aid of which the procurator has the opportunity to supervise the legality of cases examined in court. Presenting a protest to the people's court, the procurator must send a copy of the protest to the higher people's procurator's office. If the people's procurator's office of the higher instance considers that the protest is valid, it supports this protest in the court of the second instance. If it does not find that the protest has any validity, it informs the court to withdraw the protest and also informs the lower procurator's office of the error made. The protest can be withdrawn before the case is examined by the court of the second instance.

Definite requirements are made for appeals which are submitted by counsels for the defense. This proceeds from the fact that attorneys are competent persons who should present all questions in the appeal with legal foundation. Law does not establish a unified period of time during which a protest or appeal can be submitted after the passing of sentence in a court of the first instance. In practice this period has been five, ten, fifteen and even twenty-five days. However, the majority of people's courts in the country have established a ten day period for appeal and protest of sentences. This period was established on the basis of an order of the branch of the People's Supreme Court in Eastern China Region of 31 October 1950 for number 086 (the order was issued with the permission of the People's Supreme Court of the CPR.) As a result of the generalization of judicial practice by the People's Supreme Court of the CPR in 1956, a unified period was established for all courts in the country for submitting appeals or protests of sentences--ten days. For appealing or protesting rulings this period was established at five days. The period is calculated beginning with the day after a copy of the sentence is received.

In delivering copies of the sentence or in sending appeals or protests to a people's court that time during which the document was en route is not included in the appeal period. The establishment of one single period for appeal was caused by the fact that rapid

application of criminal repression assures the necessary educative effect of a trial. Together with this, in establishing periods for appeal and protest of sentences, it was taken into account that the parties should have sufficient time at their disposal to draw up valid appeals and protests. Appeals and protests which are sent after the deadline are usually not accepted by the courts. But if the party found himself in exceptional circumstances the people's court could examine a request to re-establish the appeal period and upon establishing valid reasons for which the appeal was not delivered in time, the court could re-establish the right which was lost to appeal the sentence. Otherwise the people's court rejects the petition. However, even in such a case an incorrect sentence which does not meet the requirements of objective proof will be reviewed by the court, but in the procedure of supervision. If the person who submits the appeal beyond a deadline has no valid reason for this but insists upon the appeal, the people's court which has passed the sentence, if the right of appeal is not restored, must examine the appeal and the sentence, and, if it establishes any violations or distortions of actuality, must send the case to be decided in the judicial supervision system. If the period has been passed without valid reasons and there are no errors in the sentence or ruling, and the party which has submitted the appeal continues to insist on this appeal, the appeal is accepted by the people's court which has passed the sentence, and information of the fact that the party has insisted on the appeal is passed onto the higher people's court. The party which has submitted the appeal is informed of the notification to the higher court.

The people's procurator's office which has submitted a protest acts in accordance with the above procedure. If the protest of the people's procurator's office is submitted after the period has lapsed for appeal it is examined as a protest within the judicial supervision system. The people's procurator's office does not petition to re-establish the period for protest to an appeal court. In order to avoid possible errors in the period for submitting appeals and protests to the judge who announces the sentence, he has the obligation to explain the period and procedure of appeal in a form comprehensible to the parties, and to question the parties as to whether this explanation has been understood by them. Appeals as a rule are submitted to the people's court which has passed the sentence. The people's court, upon receiving an appeal or protest, checks as to whether the appeal or protest was submitted by the correct person,

and whether the appeal period has lapsed, after which it sends a copy of the appeal or protest to the "opponent" and designates a period within which the party can present an objection to the appeal or protest. In such a case it is not required that the party submit the objection in any special form. The objection can be submitted verbally and is entered by the people's court or is drawn up in a legal consultation office. After this the people's court, preparing a memorandum, sends the appeal, the objection to the appeal and all materials in the case to the people's court of the second instance. The submission of the appeal directly to the people's court of the second instance is no obstacle toward this court examining the apppeal. The people's court of the second instance, upon receiving the appeal, must verify as to whether the appeal was submitted by the correct person and whether it was submitted within the period established, and it must send a copy of the appeal to the other party, receive an objection to the appeal and obtain the case from the court of the first instance for review.

The court of the second instance has no direct opportunity to establish whether the appeal period has lapsed. Therefore, before it makes any decision on the appeal, this court sends the appeal to the court which has passed the sentence and at the same time sends a request to turn over the case to it if the appeal period has not lapsed. Subjects in Chinese criminal procedure which can appeal a sentence are parties, the rights and interests of which have been violated during the trial.[5]

Grounds for appeal or protest of a sentence or ruling of the court of the first instance can be the following: a) incomplete preliminary investigation in court examination; b) violation of the legal procedure of trying the case by the court, particularly violations of the right to defense; c) incorrect application of material law; d) passing of unjust sentence; e) passing of a sentence which did not correspond to the materials in the case. Cases are possible whereby conclusions of the court are not confirmed by the materials in the case and whereby the materials used as a basis for the sentence had not been examined during the judicial examination. As a result of the generalization of judicial practice conducted in 1956 by the People's Supreme Court of the CPR, it was established that appeals were to be submitted by the following: the person convicted, his representative and close relatives, the prosecutor-procurator, institution, or enterprise as a "third party," which was interested in the case or on the initiative of which the criminal

action was initiated, the victim, the civil plaintiff and the respondent. At present, as a result of summing up court procedures in criminal cases, it has become clear that the following persons may appeal a sentence. The defendant who has the right to appeal any verdict of guilty or not guilty. Upon the instructions of the defendant the counsel for the defense has the right to submit an appeal. Without the consent of the defendant the counsel for the defense does not have the right to submit an appeal, although this took place in the past in certain courts. Such a prohibition proceeds from the fact that if the defendant does not instruct the counsel for the defense to draw up an appeal, this signifies that he has declined the services of the attorney who is automatically removed from the case. In drawing up an appeal on the instructions of the defendant the counsel for the defense is not bound by the opinion of the defendant on the argumentation of the appeal. The legal representatives of the defendant, his guardians and close relatives have the right to appeal any sentence with the consent of the defendant independent of whether they appeared as counsels of the defense in the trial.

Upon appealing sentences, the lawful representatives, guardians and close relatives, having the consent of the defendant to appeal, are not bound by the will of the defendant in drawing up the appeal and may express their viewpoint of the sentence, if the defendant does not insist upon a definite formulation and limitation in the appeal. If the close relatives, guardians or counsel for the defense of the defendant have submitted an appeal without asking the opinion of the defendant, the people's court arranges a meeting of the defendant. If the defendant is not in agreement with the ssubmission of the appeal it is not accepted by the court. However, if close relatives, guardian and attorney consider the former sentence erroneous and submit an appeal, the court of the second instance may recognize this appeal to be "an appeal by the masses" and review the case within the framework of judicial supervision. Cases are possible whereby the population of a district where the defendant lives considers that he has been convicted erroneously. In such a case the population of this district should inform the procurator's office and the court of its opinion, from which the subsequent review of the case in the framework of supervision depends. The civil plaintiff and his representative have the right to appeal a verdict in a civil action. The plaintiff may appeal a verdict which he considers that the court has turned down the suit without basis and has designated an incorrect sum which should

be levied on the defendant in order to make retribution for material loss suffered. Giving the plaintiff broad rights to appeal any verdict, including a verdict of not guilty, if in the opinion of the plaintiff his rights and lawful interests were violated by this verdict, is explained by the requirement for reliable safeguards of the property rights of state enterprises, institutions, social organizations, other cultural cooperatives and individual citizens. The civil respondent and his representative are parties in the trial. Therefore they may appeal a sentence if they consider that the court has incorrectly resolved the question on the satisfaction of the civil suit or has incorrectly calculated the degree of satisfaction. However, neither the civil plaintiff nor the civil respondent nor their representatives have the right in their appeals to deal with the question of guilt or innocence of the defendant in the crime committed, as well as questions of the qualification of the crime and degree of punishment.

The right to appeal a verdict is enjoyed by the victim in cases of private prosecution. However, if the procurator has entered the case with the aim of guarding the public interest or if the private prosecution case has been transmitted by the court for investigation and examination according to ordinary procedure, the victim is no longer a party and is deprived of the right to appeal. In such a case he may only petition the procurator to submit a protest of the verdict. The institutions, enterprises and organizations, if they are not parties in the case, do not have the right to appeal a verdict even in case of certain interest in the matter. The procurator enjoys broad rights to protest verdicts and rulings. "In cases whereby the people's procurator's office recognizes a decision or ruling as erroneous, if passedby a court of equal level, acting as a court of the first instance, it may submit a protest within the procedure of appeal."[6]

The procurator in the court of the first instance is at the same time a party to the case, as well as a representative of the organ which is entrusted with the supervision over the correspondence to the laws governing the judicial activities of the people's courts.[7] Therefore the procurator has a right to protest any unlawful or unfounded verdict independent of whether or not the prosecution in the court of the first instance had been supported by the procurator's office, and whether or not the other party had appealed or not appealed the verdict. A person which had the right to submit an appeal may withdraw it before the convening of the court session of the court of the second instance. A protest submitted by the procurator may be withdrawn

by a higher procurator's office.

3. Procedure of examining Cases in the Court of the Second Instance

The procedure of reviewing sentences which have not become valid has been handled in varying ways in the country's courts until quite recently. In certain courts it was almost identical with court procedures in courts of the first instance: with the participation of the parties, summoning of witnesses, experts and direct examination by the court of the second instance of all evidence in the case; but three permanent judges made up the college in the court of the second instance in examining cases. The preparatory section of the court session was almost identical with the procedure used in the courts of the first instance. The secretary of the court session, establishing the appearance of the parties, in case of need announced the procedure which was necessary to observe during the court session, after which the court entered, and the secretary reported to the chairman on the persons who had appeared. The chairmen then announced that the court was in session, verified the identity of the defendant, announced the members of the court and asked the defendant if he had any challenges to make. With this the preparatory session of the court session ended and the court began to examine the case. The chairman briefly announced the circumstances of the case, the sentence of the court of the first instance and the arguments of the appeal. Then the defendant spoke and the evidence underwent verification. Arguments by the parties ensued as well as the final word by the defendant, and the court recessed temporarily to carry out the verdict. This procedure of review was called "direct examination of the case."

In the practice of certain people's courts in cities the judges who examined and appealed a case in a court of the first instance drew up a document--"indictment to the appeal and reasons for the appeal"--and sent it together with the appeal and the materials in the case to the court of the second instance. In other people's courts the appeals were examined by the judges or chairman of the college before sending them to the court of the second instance, and if they considered that the verdict was passed with any violations, they could examine the case once more in court session. Certain people's courts, before trial, carried out several investigative actions, directed at establishing or verifying evidence, if they

considered that the case had been insufficiently investigated. Other people's courts of the second instance conducted a so-called "written examination of the case," whereby the participation of the parties in court was prohibited. The case was determined only by three permanent judges on the report of one of the judges based on the written materials of the case. Finally, as will be shown below, the appeal procedure of examining cases was also used in the courts. As a result of the study and generalization of the experience of the people's courts in the country in reviewing verdicts which have not become valid, the People's Supreme Court of the CPR regulated procedure in the courts of the second instance in 1956.

On the strength of Articles 11 and 14 of the Law on the organization of the people's courts, the main task of the people's courts, acting as courts of the second instance, is the implementation of judicial supervision and control over the activities of the lower people's courts by examining appeals and protests. In view of this task it was established that the procedure for examining appeals or protests of people's courts of the second instance should differ from the procedure of examining cases in people's courts of the first instance. People's courts of the second instance, as a rule, need not examine the case according to its merits with the direct introduction of all evidence, but they should verify the legality and validity of the verdicts of the courts of the first instance on the basis of the materials of the case and the appeals or protests of the parties. This principle of examining cases in courts of the second instance was actually applied in certain people's courts of middle or higher level and produced positive results. For example, a people's court of the higher level and several people's courts of the middle level Kiangsu province examined in appeal procedure 80% of all appealed and protested cases. The higher people's court of Honan province in 1955 examined 32% of the criminal cases in appeal procedure. The positive side of the appeal procedure of examining cases consists in the fact that, according to the general conclusions arrived at by this people's court, this procedure is very simple and convenient and the cases are examined without delay. Persons having participated in the trial of the first instance are not summoned to the court of the second instance, with the exception of the parties, the appearance of whom is obligatory.

(From the viewpoint of elucidating the advantages of appeal procedure in the court of the second instance

the article by He Chan-chun "division of functions between the courts of the first and second instance," published in the magazine Chen .a Yenchiu, No. 2, 1956, is of interest. The author expounds in detail the advantages of the appeal procedure of examining cases, dealing with each section of the court session in the court of the second instance. As a result the author comes to the conclusion that during the course of the 8-hour working day, the court can examine and decide seven cases, and five more complicated cases. In one month (22 working days) each court can examine up to 150 cases. Along with the indications of the rapid appeal examination of cases in the court of the second instance, the author introduces other facts to the advantage of this procedure, which secure the lawful rights and interests of the parties in the courts of the second instance. The task of the court of appeal is a check on the legality and validity of court decrees of the first instance. This goal consists in the court of the second instance implementing judicial supervision within the procedure of examining appeals, and with the aid of this it instructs the bwer courts, but should not examine a case in its entirety in the place of the court of the first instance." In the third issue of this magazine, Han Cheng-han, in his article "My opinion on the article' division of functions between the courts of the first and second instance'" presents his opinion on the expediency of examining cases in the court of the second instance, based on the principles of appeal review. "We should not," he says, "understand the functions of the appeal courts in our country as the examination of cases on the basis of law and not on the merits of the cases. This function should consist in examining a case both on the basis of law and on the merits of the case." He states further that the court of the second instance should not return a case to the court of the first instance for re-trial and should pass a decision itself, on the basis of the new examination of the case on its merits, in order to eliminate red tape. Han Cheng-han criticizes the statements of He Chan-chun on the length of time necessary for examining a case and indicates that the judge and court cannot possibly learn all the features of the case in such a short period of time and thus cannot come to a correct decision.)

At present the People's Supreme Court of the CPR is introducing appeal procedure for examining cases in courts of the second instance, but in certain cases it allows the possibility of examining cases on their merits by the courts of the second instance with the application

of judicial examination. The present procedure of reviewing sentences which have not become valid is based on the same principles in Chinese criminal procedure, upon which the procedure of examining cases in the courts of the first instance is constructed. Proceedings in the court of the second instance are verbal, public, with observance of the principles of national language, the right of the accused for defense and several other rights. Examination of cases by a court of the second instance on the appeals and protests of the parties is conducted according to the rules established for courts of the first instance. The question as to the removal of judges, the procedure of passing rulings and verdicts, and the procedure of deliberation by the judges is decided on common bases. However, differing from the court of the first instance, the court of the second instance does not examine the great majority of cases in their entirety, but verifies the legality and validity of the verdicts passed by the lower courts, according to the materials present in the case and those presented by the parties. This system of procedure in the court of the second instance assures speed in examining cases and guarantees the parties the observance of their legal rights and interests, and aids in establishing objective truth in the case. The peculiarities of examination of cases by a court of the second instance are caused by those tasks standing before the court as a higher judicial instance, called to assure a strict observance of the law by the courts of the first instance, in order that persons guilty of committing crimes should be dealt punishment established by law and that at the same time no cases of unfounded conviction of innocent persons should be allowed. At the same time, in more complex cases whereby the court of the first instance is not able to pass a correct verdict upon retrial, a more complex procedure is allowed, which also guarantees the legality and validity of the verdict passed by the court of the second instance. In order to examine cases in the court of the second instance colleges have been formed containing three permanent judges. A judge participating in an examination of a case in the court of the first instance cannot be a member of the college of the court of the second instance. Each complement of judges is appointed certain people's courts of the first instance, and each member of the college possesses a certain number of definite people's courts of the first instance. All cases appealed or protested are distributed among the courts in correspondence with the distribution of the lower courts. Parties in the court of the second instance are the defendant and his counsel for the defense, the civil plaintiff

and his representative, the civil respondent, and in cases of private prosecution--the victim and his representative. The procurator is a party in this stage of the process only if he has lodged a protest, but in this case he appears as a representative of the organ of observance of the legality of cases examined by the courts. The acting chairman of the college (composition of the court) is the person who has been named as chairman of the court or chairman of the college for criminal cases. If the chairman of the court or college participates in the examination of the case, he is the acting chairman. A secretary, who keeps the court record, is present during the court session. Before the convening of the court session in the court of the second instance, suitable preparatory work is carried out, determined to secure the opportunity to examine the case. One of the judges in the case studies it and prepares a report for the court examination. During the process of verification and study of the case the judge must, in correspondence with the basic governing principle--"facts are a basis, and law is a criterion" --first of all verify whether the facts were elucidated fully, on the basis of which the court of the first instance passed a verdict or ruling. He must verify as to whether the evidence is sufficient and then check as to whether an error has been made in qualifying the crime and determining the punishment and whether procedural violations have been made. If during a study of the case the judge has any proposals directed at improving the work of the court of the first instance, he enters these in the journal of the people's court for subsequent examination at an operative conference of judges of people's courts under supervision. Naturally these proposals cannot deal with the factual side of the case being examined. Particularly important and complicated cases are studied by all the members of the court before the court session. Before the examination a member of the college which studies the case reports to the college, which decides when the case should be heard and whether the case should be heard in open or closed session, with appeal procedure or with the application of judicial examination and the summoning of the parties and all participants in the case. Three days before the judicial examination of the case, the secretary of the people's court of the second instance informs the parties of the date of the examination, indicating in the notification that the parties may participate in the examination and that their non-appearance will not impede the judicial examination. Witnesses, experts and other persons participating in the case are not summoned to the court of

the second instance. Notification is also made to the parties with consideration of their place of residence, in order that the parties receive this notification 3 days before the court examination, not including time en route, so that they may have time to prepare for participation in the examination.

The defendant being in prison is also informed of the day the case is to be heard and if he wishes to directly participate in the examination of the case the place of imprisonment assures the appearance of the defendant in court. The court session is divided into three parts: the preparatory session, the examination of the appeal or protest, the carrying out and announcement of the ruling or verdict. The court session is opened by the chairman of the judicial composition, announcing what case is being heard, whether it is being examined on an appeal or protest. The chairman announces the composition of the court, and, if the parties are present, explains their right of challenge and right to make additions to the appeal or present new evidence and new petitions after the report on the case by the member of the court. After this the case is reported by the member of the court who has studied it. In the report the judge briefly outlines the essential points of the charges and sentence of the court of the first instance, gives a brief statement of the content of the appeal or protest, as well as rebuttals to them and other materials present in the case. He brings out the most important questions which, in his opinion, whould be the object of the examination of that particular court session. An objective exposition of the facts and circumstances of the case and appeal or protest are demanded from the judge who is reporting on the case, in a form accessible to the persons present. The judge cannot express his opinions on the case or make any proposals.

After the report, the acting chairman gives the floor to the party which has submitted the appeal or protest, warning this party not to repeat itself and not to give the content of the appeal or protest. The acting chairman may question the parties in order to elucidate certain circumstances. After hearing the parties the court gives the final word to the defendant if he is present. The chairman announces a recess and the court leaves the courtroom in order to reach a verdict or make a ruling. In reaching a verdict or passing a ruling the court of the second instance is directed by the rules on reaching verdicts and making rulings in the court of the first instance, that is, the verdict or ruling may be carried

out directly by the court which is examining the case, or it must be discussed in a session of the judicial committee. During the deliberations all the judges possess equal rights. If there is a difference of opinion the questions are resolved in correspondence with the principle of the subjugation of the minority to the majority, although the opinion of the judge remaining in the minority must be noted in the record of the deliberations, which is kept by the secretary in the deliberation room. After the decision is arrived at the acting chairman or judge-reporter immediately announces the content of the ruling in the courtroom. If the defendant is present, he may be explained in a more accessible form the content of the decision of the court of the second instance. As to the form of the verdict or ruling passed in the case examined by the court of the second instance, in the section on the parties if the protest was submitted by the procurator's office, a note is made of this with the name and position of the procurator (chief procurator) and the designation of the procurator's office. If the appeal has been submitted by the defendant or private prosecutor, the legal status of the person and his name are noted. The descriptive section should indicate whether the court of the second instance is in agreement with the verdict or ruling of the court of the first instance, plus the exact designation of the people's court of the first instance, the date of the passing of the verdict or ruling and the number of the case. In addition, the date of the examination of the case in the court of the second instance is indicated, the names of the members of the court, the secretary, the procurator, if he is in attendance, and finally, it is noted whether the case has been examined in opened or closed session. The facts and motives must be expounded here, on the basis of which the court of the first instance reached its verdict or ruling.

The resolution section contains the decision which was reached by the court of the second instance, as well as the grounds for reaching the decision. The decision of the court of the second instance must be given clearly and accurately and should leave no room for ambiguity. If the verdict of the people's court of the first instance is altered, it should be concretely indicated whether parts of the verdict or the entire verdict is to be changed; if part is to be changed it should be indicated which part and in what manner. The higher and middle people's courts must write at the end of a death sentence that the condemned person has the right to appeal this sentence or submit a petition to review the sentence. The period during which

the appeal must be made is indicated. In the practice of the courts of the CPR there are two procedures of passing rulings or verdicts by the courts of the second instance. The first consists in the fact that in the deliberating room the court does not write the full text of the verdict or ruling, and in the courtroom its basic content is read. The second consists in the fact that in the deliberating room the court draws up the verdict or ruling fully and reads it in the courtroom. In courts of the second instance work is done in order that verdicts and rulings for the majority of criminal cases are drawn up in the deliberation room and announced directly after the case is examined. Using such a method the court forms a much clearer picture of the case, which is not clouded by other cases examined during the same day, and the reading of the full text of the ruling achieves a greater educative effect. If the court of the second instance, on the preliminary report by the judge who studied the case, reaches a decision of "direct examination of the case," that is, a full judicial examination with the summons of all participants in the case, in such a case the procedural order of examining the case in the court of the second instance is identical with the procedural order established for courts of the first instance. The procedural order for examining cases in the court of the second instance guarantees the rights and interests of the parties in the trial. Any party which submits an appeal against the verdict and which appears in court has the right to make verbal explanations on the appeal, to give rebuttals against the appeals by the other party, to support his request to reverse or alter the verdict. The parties also have the right to submit various types of petitions before the higher court on the case and to present new materials for the court. The defendant has the right to make use of a defense counsel. That which has been stated on the procedure of reviewing verdicts which have not become valid allows us to draw a conclusion that in Chinese criminal procedure verdicts are reviewed in the courts of the second instance basically according to appeal procedure. But the presentation to the courts of the right to conduct judicial examination--"direct examination of the case"--for certain cases in reviewing verdicts which have not yet become valid, introduces elements of appeal into the cassation procedure, which gives the right to draw a conclusion on the presence of a mixed cassation-appellate procedure of examining cases in the court of the second instance, while this mixed procedure is not applied to one specific case: one case may be examined only according to cas-

sation procedure or only according to appellate procedure. In Chinese literature and official materials, as well as in the lectures by law professors, the procedure of reviewing verdicts which have not yet become valid, as well as appeals and protests submitted by the parties, are called cassation, which is entirely correct, since an extremely small number of cases in courts of the second instance go through "direct examination." In addition, the party which submits the appeal does not know what will be the court's decision on the procedure of examining the case and therefore cassation appeals are submitted. In addition the review of an insignificant number of cases in appellate procedure has nothing in common with bourgeois appeal. Along with the goal of achieving objective truth in each case examined, the institution of reviewing judicial verdicts both in the form of a cassation examination of cases and in the form of "direct examination of cases" in the people's democratic process has as its task the direction of the judicial policy of the state which is building socialism, in direct correlation with the concrete tasks standing before the courts of the CPR at the present stage of state development.

4. Examination and Evaluation of Evidence in the Court of the Second Instance

The verification of verdict on appeals and protests of persons who have the right to appeal and protest is carried out from the viewpoint of legality and validity of sentences, and this verification is comprehensive. Comprehensiveness of verification makes it possible to discover any error influencing or having the potential of influencing the justice of a verdict. Therefore, comprehensiveness of verification is an essential condition for guaranteeing the legality and validity of appealed verdicts. But at the same time comprehensiveness of verification does not serve as a sufficient guarantee for the legality and validity of appealed sentences. For this it is necessary to have conditions which would make it possible to ascertain all errors committed in a specific case and influencing the correctness of the verdict. The ascertainment of possible errors is achieved by requiring courts of the second instance to verify verdicts in their full scope, that is, under revision procedure. Revision procedure presupposes the active functioning of the court of the second instance in verifying the

legality and validity of verdicts. The court of the second instance verifies the verdict not within the limits of the express appeal and protest, but in its full scope, independent of whether the parties in their appeals indicated any violations of their rights and interests and whether they were able to build a solid foundation for their demands on reversing or altering the verdict. The court of the second instance also verifies the correctness of the verdict in respect to all persons who have participated in the case and not only for those persons who have appealed the verdict, as well as in respect to all facts and events having a bearing on the crime. But revision in criminal procedure in the CPR has definite limits, beyond which the court of the second instance cannot proceed. In the absence of a protest by the procurator the court of the second instance cannot decrease the degree of punishment against the defendant and cannot reverse an acquittal. As a rule in passing judgment the court of the second instance takes into consideration only that evidence which was examined during the trial in the court of the first instance. However, the parties possess the right to present new evidence to the court of the second instance, which was not part of the evidence examined during the trial in the court of the first instance. In evaluating new evidence the court of the second instance takes into consideration that these materials were not verified by the court of he first instance, and certain evidence was received according to proper procedure. Therefore the doubt as to their authenticity may be greater than the doubt as to the authenticity of evidence which is part of the case material. New materials as a rule testify to the incompleteness of the investigation and court examination and usually serve as a basis for returning the case to the court of the first instance for a re-examination or for examination of this case in the court of the second instance with a judicial examination and passing of a new verdict. The court of the second instance, in examining a case on appeal or protest by the parties, must evaluate the evidence collected for the case, without which it cannot certify the correctness of the verdict. According to the existing system of reviewing verdicts which have not yet become valid, the evaluation of evidence by the court of the second instance is undertaken in two forms. Upon the decision of the court of the second instance of the necessity of conducting judicial examination in appealed or protested case, the evaluation of the evidence takes place in the same forms as in the court of the first in-

stance since in this case the judges of the second instance directly receive all evidence and evaluate it on the basis of the well-known regulations: "Fact is a basis, and law is a criterion." In this case the court of the second instance may recognize as erroneous the conviction of the judges in the court of the first instance and evaluate anew all evidence. In addition, evidence may figure in the court of the second instance which was not examined during the trial in the court of the first instance, and this evidence must also be evaluated by the court of the second instance.

In reviewing a case without judicial examination the court of the second instance examines only written materials on the case, decides the case only on the basis of written documents on the case and information by the defendant, who supplements his appeal but is not questioned in the court of the second instance. The court of the second instance examines and evaluates evidence collected in a case in order to become convinced as to whether sufficient and reliable evidence was at the disposal of the court of the first instance, on the basis of which the verdict was reached, and to see if everything was done by the court of the first instance in order to verify this evidence. In case of lack of valid grounds for the conclusions of the court and inconclusiveness of the verdict the court of the second instance repeals the verdict in order that the court of the first instance might once again investigate the factual circumstances of the case, eliminating errors during the secondary examination.

5. Decisions Passed by the Court of the Second Instance

On the basis of broad authorities granted in reviewing a verdict which has not become valid, right up to the judicial investigation the court of the second instance is not bound by the limits of the verdict of the court of the first instance in passing a decision in respect to the degree of punishment and is not limited by the motives stated in the appeal or protest. As a result of the examination of the case the court of the second instance may arrive at one of the following decisions:[8] 1. To leave the verdict of the court of the first instance in force and to fail to satisfy the appeal or protest. This means that the verdict of the court of the first instance was reached in correspondence with law and actual circumstances of the case or that, although certain violations were present, they were extremely insignificant and do not in-

fluence the correctness of the verdict and do not violate the rights of the defendant. Carrying out a decision in this case, the court of the second instance must refute the facts expounded in the appeal or protest in a well motivated fashion. 2. To change the decision of the court of the first instance in whole or in part by a new verdict in cases whereby the facts are clear, the evidence backs up the facts of the commission of the crime by the defendant, there have been no gross violations of material and procedural legislation, and those violations which do exist can be corrected by the court of the second instance, for which supplementary investigation or evidence is not needed. A decision of the court of the first instance is also altered if the measure of punishment does not correspond to the crime. The court of the second instance, altering the verdict in cases appealed by the defendant, does not have the right to increase the degree of punishment designated by the court of the first instance. 3. To reverse in whole or in part the verdict of the court of the first instance and to pass a ruling. Cases are possible whereby the case would be sent to be examined once again, and this would be done by the court of the second instance, implementing the so-called "examination of cases in written form"; the court of the second instance may carry out a judicial investigation, the so-called"direct examination of cases." The case can be sent to be examined once again, both from the trial stage and the preliminary investigation stage. A case is sent to be re-examined in the following cases: a) if the appeal was submitted by the defendant or his representative and the court of the second instance considers that a mild degree of punishment has been meted out by the court of the first instance. As for cases protested by the people's procurator's office, if a court of the second instances establishes that the facts of the case are clear, evidence has been collected in full, there have been no procedural violations, and the verdict is obviously mild, this court directly alters the sentence and designates a more severe degree of punishment; b) if facts and evidence have been insufficiently elucidated and studied, or the parties presented new evidence to the court of the second instance as a result of which it became necessary to conduct supplementary investigation in the case, or other persons were determined who had participated in committing the crime; c) if the court of the first instance or organs of preliminary investigation committed gross violations of the law, for example, if the case in the court of the first instance was examined by an

unlawful staff of judges and without observing established legal procedure; if it was examined without the participation of the defendant; if no counsel for the defense participated in the case before the court of the first instance where his participation was obligatory; if a copy of the bill of indictment was delivered to the defendant less than three days before the case was heard or not at all; if the defendant was deprived of any rights during the trial of the case in court of the first instance or during the preliminary investigation. Cases which have been appealed or protested by the procurator due to violations of the law must always be examined without judicial investigation in the court of the second instance.

If during the course of judicial deliberation it becomes clear that facts established in the previous trial are doubtful, evidence is insufficient, and the circumstances of the case contain many questions which are difficult to resolve, the scope of which is comparatively broad, or that special technical expert examination is necessary to establish facts in the case and the court, after a previously tried case is returned to court for a re-trial and the court meets with difficulties during the trial or for any other reasons, due to which it is inexpedient to return the case for re-trial to the court of the first instance, the court of the second instance conducts an examination of the case and summons witnesses, parties and all other participants in the case or conducts an examination of the case on the spot (that is, at the scene of the crime or the place of residence of the defendant.) If the case has been sent to the court of the first instance for re-trial, it must be heard by a new group of judges. If in trying the case it is recognized that any facts which were established during the previous trial in the court of the first instance cause reason to doubt, evidence is insufficient or is necessary for the procurator's office to conduct additional investigation in the case for the collection of supplementary evidence, a ruling is passed to rescind the previously passed verdict and to return the case for supplementary investigation to the people's procurator's office of the same level.

The court of the second instance passes decisions in the form of rulings and verdicts. A verdict is passed by the court after the direct examination of a case with judicial investigation, with a rejection of the appeal or protest and with an alteration in the verdict. A ruling is passed in rescinding the verdict of the court of the first instance. In addition, the court of the

second instance may make observations (particular rulings) for individual questions, for example, observations on the incorrect form of the record, on violating jurisdictional rules. A verdict passed by a court of the second instance is final and cannot be appealed. It can be rescinded or altered only within the framework of judicial supervision. The instructions of the court of the second instance are obligatory for the court of the first instance upon re-trial. These instructions play a great educative role. They aid the lower courts in elimimating defects allowed by them in examining cases and have as their goal to assure the correct solution of a case when it is re-examined in its entirety. Giving instructions in its rulings on concrete cases, the court of the second instance carries out leadership over the work of the courts of the first instance and educates the judges in their own mistakes.

CHAPTER SIX

PROCEDURES OF JUDICIAL SUPERVISION

1. Current Procedures of Judicial Supervision

In Chinese criminal procedure, besides cassation review of verdicts, a special type of verdict review exists for verdicts which have become valid, review within the framework of judicial supervision. The stage of judicial supervision comes after a case is examined in the court of the second instance, and sometimes after a verdict in a case has not been protested or appealed within the established period of time and the verdict has become valid. Sometimes a case is reviewed within the framework of judicial supervision, and subsequently it is examined by a suitable higher judicial instance. The review of judicial verdicts within the framework of supervision assures their correspondence with objective truth, if the courts of the first and second instance have allowed errors to be made or have announced sentences which do not correspond to the requirements of judicial policy, and this review also assures the implementation of control by higher courts over lower courts. "The system of control in judicial work as established by the Law on the organization of people's courts in the CPR has great significance for insuring the necessary examination of cases and the timely elucidation and correction of incorrect decisions in cases."[1]

Grounds for reviewing a verdict which has become valid, as Article 12 of the Law on the organization of people's courts stipulates, is the ascertainment of an error in the verdict which has become valid, "in the establishment of facts or the application of law." Proceeding from this, verdicts should be reviewed upon becoming valid if one of the following circumstances is established: 1. Lack of valid grounds for the verdict, concretely expressed in the incomplete study of the case. Incomplete study of a case takes place when, after the examination has been completed, circumstances which affected the verdict were cleared up neither during the preliminary investigation nor during the judicial investigation. In order to examine a case fully the court should ascertain all facts which answer questions which must be resolved in the verdict. Incomplete examination can consist in the fact that the court of the first instance has not ascertained a certain important fact in the case or that certain facets of this fact have not been explained. Therefore the charges can be without proof, and consequently

the verdict of guilty cannot be left unchanged and must be rescinded. A sentence is also poorly grounded if the conclusions reached in this decision do not agree with the evidence in the case. Sometimes the conclusions of the court are incorrect and do not reflect the objective truth because the case has been examined incompletely, and evidence collected in the case is insufficient in order to arrive at the conclusion which the court has formulated in the verdict. However, it is possible that a case was examined fully and comprehensively, and the evidence has been collected in sufficient quantity and establishes definite facts, but the court came to the wrong conclusion being in disagreement with the evidence in the case. In these cases the conclusions of the verdict on the guilt of the defendant, on the degree of punishment or on the validity and dimensions of the civil action contradict the evidence examined in the case. Lack of validity of a sentence is possible, accompanied by obvious injustice, that is, when the punishment did not correspond to the public danger of the crime and the criminal. Injustice of verdict consists in an overly mild or overly severe punishment.
2. Unlawfulness of verdict expressed in the following: a) in an obvious violation of court procedural forms, which, by means of depriving or limiting the rights of the parties guaranteed by law in trying a case kept the court from a comprehensive examination of the case and influenced or could have influenced the passage of a just verdict. The sentence of the court of the first instance and ruling or verdict of the court of the second instance must be well motivated and solid. Lack of solid motivation of sentence and ruling is usually a result of the lack of valid basis and lack of proof of the charges. Lack of motivation in the verdict and ruling makes it impossible for the supervisory instance to make a correct evaluation of the evidence by the court; b) in [illegible] violation or incorrect application of material law, that is, the court applies an incorrect law or violates the demands of the law applied. This can be expressed in an incorrect qualification of the crime, in violation of the sanctions of the law according to which the crime was qualified.
3. Perjury by witnesses, in the conclusions of experts and other evidence on which the verdict was based.
4. New facts and circumstances which were not known to the court when the verdict was passed and which established the incorrectness of the verdict. 5. Criminal abuses by the judges passing the verdict.

According to the Laws on the organization of the people's courts and on the organization of the people's

procurator's office at present the following supervisory procedure exists for protesting verdicts and rulings by all courts. 1. The chairman of the people's court, if he discovers errors in the verdict of the given court, which has become valid, affecting the establishment of facts or application of laws, must transfer the case to be examined and judged by the judicial committee of that people's court.[2] 2. The higher people's court, in case errors are revealed in the verdict which has become valid has a right to take the case or transfer it to a lower court for re-trial.[3] 3. The People's Supreme Court, in case of discovery of an error in a sentence by a local court which has already become valid, has the right to take over the case or transfer it to that specific local court for examination.[4] 4. The People's Supreme Procurator General's Office, in case an error is discovered in sentences of people's courts of various levels which have already become valid, as well as the higher people's procurator's office in case of discovery of an error in the sentences of lower people's courts which have already become valid, have the right to protest them in accordance with procedure established by law. Practical fulfillment of these regulations in the law is achieved by granting citizens broad rights in introducing petitions on verdicts which have already become valid. Parties participating in a case before a court of the first instance, any citizen of the Republic, institution, enterprise or social organization, as well as collective labor institutions may appeal a verdict which has become valid to the people's court or people's procurator's office.

"The judicial activities of the people's courts," Tung Pi-wu said at the third session of the All-Chinese Assembly of People's Representatives--first convocation--"are also under the control of the broad masses. A few years ago the people's courts of all levels began to conduct work in handling letters from the public and reception of visitors. This is an important facet of the policy of ties with the masses, which is conducted in our judicial work. In the struggle for the liquidation of counter-revolutionaries the masses actively aided the people's courts in verifying evidence and gave their opinions on many cases which had received incorrect verdicts. All of this made it possible for the people's courts to work on an even higher level and avoid completely or decrease cases of judicial error."[5]

Proceeding from the experience of all people's courts, a party participating in a case, in cases of lack

of agreement may appeal a sentence which has already become valid as well as a ruling passed by that court and the court of the first instance, and a verdict and ruling passed after the trial in correspondence with the procedure of trying cases in the court of the first instance of new composition, organized on the basis of the decree of the judicial committee. Verdicts and rulings which have become valid, passed by a court within the framework of supervision, as well as verdicts and rulings which have been passed after trial in correspondence with procedures of trying cases in courts of the second instance of new composition, organized on the basis of the decree of the judicial committee, cannot be appealed. A higher people's court may discover errors in verdicts which have become valid by lower courts, by means of conducting planned and unexpected inspections and checks. Higher people's courts, besides exercising control over the work of lower courts within the framework of judicial supervision, make rather broad application of the method of spot checks of cases for making general conclusions of experience in judicial work, in order that the lower people's courts might be directed by the general conclusions in their own operations. If cases are revealed by spot check where incorrect decisions were arrived at, review of these sentences is carried out on the basis of law. Errors in people's court sentences which have become valid can be revealed also by judicial-administrative organs in checking the operations of lower courts.

Proposals by these organs can serve as a basis for reviewing verdicts which have become valid. In November 1955 the higher people's court of Hopeh province and the justice administration of this province spot-checked criminal cases which had been tried in the lower people's court of Chengting, Chu and other counties, and after this study they made general conclusions of the experience of the work of the courts. The people's courts of all levels of this province, proceeding from these general conclusions, checked cases of counter-revolutionary and other crimes, for which sentences had already become valid. Fourteen thousand criminal cases were checked. On the basis of law 500 cases were reviewed in which erroneous verdicts had been reached. As a result of this great work, errors in sentences which had become valid were not only revealed and corrected in time, but the ideological-theoretical level of judicial workers was increased, as well as their knowledge of legal science, and this doubtlessly played an active part in the further increase in the quality of trying cases. With the aim of correcting possible errors in sentences

which had already become valid, people's courts of all levels are systemmatically conducting checks of verdicts of the court. This voluminous work by the people's courts brings positive results and makes it possible to eliminate possible mistakes in judicial work rapidly and accurately. The carrying out by people's courts of various levels of reviews of verdicts which have become valid guarantees the observance of the lawful rights and interests of those persons convicted and assures the correctness of judicial repression. Article 43 of the regulations on re-education through labor in the CPR provides that if a corrective labor institution uncovers authentic material on a person already imprisoned in this institution, presenting the case in another light, it must immediately request the case to be reviewed by the judicial organ which tried the case previously, or the people's court closest to the corrective labor institution. The institution should provide suitable grounds for its request. An institution, enterprise or social organization also have the right to request or appeal to review a sentence which has already been executed. In this respect the case of Chung Kui-lan is of interest.[6]

Soon after the liberation of the entire country the people's court of Tinghsiang county of Szechwan province, at the request of Chung Kui-lan, examined the case of a counter-revolutionary organization and convicted its members. As was brought out subsequently, one of the members of this counter-revolutionary organization evaded responsibility and was not turned over to the court. Chung Kui-lan, in exposing the entire organization, learned of this counter-revolutionary and reported him to local organs of authority. But the judge who was trying the case did not study all the circumstances of the case and instead of convicting the counter-revolutionary, sentenced Chung Kui-lan to six months imprisonment for slander and false denunciation. The convicted woman appealed the sentence to the Szechwan province people's court. But the counter-revolutionary, against whom Chung had made the charges, wrote a denunciation against her to the people's court, stating that she was discrediting state cadres, giving false denunciations, violating election laws, etc. The Szechwan province people's court, in examining this case, believed the slanderous statements and sentenced Chung Kui-lan to two years imprisonment. Chung Kui-lan was sent to prison. One night in prison Chung Kui-lan cut her face slightly while sleeping. The prison administration, imagining that Chung had tried to escape, turned over her case to

the court, which sentenced her to an additional year in prison. This case aroused the righteous indignation of private citizens, who appealed to the Party committee of Tinghsiang county. The Party committee requested the Szechwan province people's court to examine the case within the framework of judicial supervision. The Szechwan province people's court, examining the case of Chung Kui-lan, rescinded all three sentences, dismissed the case and freed Chung Kui-lan from prison. The state aided the freed woman with money and other means. Having established the lack of grounds for the conviction of Chung the Szechwan province court transferred the materials to the people's procurator's office for institution of proceedings against the counter-revolutionary who had slandered the honest woman.

The question of the necessity of reviewing verdicts and rulings which have gone into legal force by people's courts of all levels is decided by the chairman of the court after verifying the case personally or after a report to him of the circumstances of the case by the person to whom the chairman has delegated the check-up. In case of revelation of an error in respect to the establishment of facts or application of policy, laws and decrees in a verdict which has been passed earlier, the chairman of the people's court transmits the case for the examination and decision of the judicial committee. If a judicial committee, checking the case transmitted to it by the chairman of the court for review, recognizes that there is an error in the sentence or ruling which has been passed earlier, it passes a resolution to organize a new judicial staff to review the case or resolves to transfer the case to the people's procurator's office for additional investigation.

If the judicial committee of the people's court in which the case was protested or appealed recognizes that the verdict or ruling passed by the court as a court of the second instance contains an error in the establishment of fact and that it is expedient to return the case to the court of the first instance for retrial or to the people's procurator's office equal in level to the people's court of the first instance for additional investigation, it can pass a resolution to rescind the former verdict and return the case for re-trial or supplementary investigation. According to the resolution passed by the judicial committee, the court passes a ruling which is delivered together with the case to the people's court of the first instance, or to the people's procurator's office which is equal to the people's court of the first instance. If as a result of studying

the appeal, request, and materials, in the court which passed the sentence or in the higher court it is ascertained that there is no basis for reviewing the case within the framework of judicial supervision, the person who made the appeal or request is informed of this with an explanation of the circumstances which exclude the possibility of review. We should mention that in Chinese criminal procedure there is no line between the review of verdicts which have gone into legal effect and the re-commencement of a criminal case. The legal procedure of carrying out review and re-commencement of a case is identical.

2. Procedure of Examining a Case

In Chinese criminal procedure the following order of reviewing sentences which have gone into legal effect has been established. Under the direction of the chairman of the court the judicial committee examines and discusses a case and the sentence which has gone into legal effect of the same court. Only members of the committee participate in the meetings of the judicial committee. The chief procurator of the people's procurator's office of the same level may attend with the right of consultative vote. At the beginning of the session the chairman of the court or a member of the court on his instructions reports the circumstances of the appeal or protest, if they were submitted, the circumstances of the case and a brief content of the verdict. The reporter does not give his opinion on the case. After the report the case is discussed and a ruling is made. If no agreement is reached in passing a ruling, the ruling is passed by a majority vote. The procedure of reviewing verdicts which have gone into legal force is somewhat different in the higher people's court and in the court which passed the sentence, and in the composition of the court organized on the instructions of the judicial committee of that court. The judicial committee of the higher people's court appoints a judicial college formed of three permanent judges to review verdicts which have gone into legal effect. During the session only members of the college are present, one of whom reports on the contents of the appeal or protest, if they have been submitted, relates the materials of the case and the content of the verdict. Then a discussion takes place, as a result of which the college passes a ruling by a simple majority. The decision of the college in cases of particularly serious crimes and complicated cases is sent for discussion and approval to the

judicial committee of that court, after which a ruling is made in the name of the college which examined the case. The ruling or verdict passed by the court after the review of the case is signed by all the members of the court. In the introductory part of the ruling indication should be made that that specific case was reviewed on the basis of a decree of the judicial committee. The people's court examining a case within the framework of judicial supervision makes a ruling if questions are resolved not as to the innocence of the person and the degree of punishment, and a verdict is reached if the verdict of the court of the first instance is rescinded or altered. The new verdict or ruling can be appealed if the case has been previously examined within the framework of judicial supervision in the court of the first instance; if the case was examined in the court of the second instance, the verdict or ruling of the supervisory instance cannot be appealed. If the higher people's court recognizes that it must verify the case directly, where the factual side of the case contains an error, it takes the case and acts on it. A new verdict passed by this court which rescinds or alters the former verdict cannot be appealed. A judge who participated in examining the case in the court of the first or second instance cannot take part in action on reviewing a sentence which has gone into legal effect. This is explained by the fact that the judges who have already examined the case are somewhat prejudiced toward the case in reviewing it, and this may influence the passing of a just verdict.

3. Decisions of the Supervisory Instance

As a result of the examination of a case within the framework of judicial supervision the people's court may pass one of the following judgments: 1. A ruling to leave in force the verdict of the court of the first instance and the ruling of the court of the second instance, and to turn down the appeal or protest if the verdict of the people's court of the first instance and the ruling of the court of the second instance were carried out correctly. 2. A new verdict, where correct qualification of the crime is indicated, and the law which must be applied if the facts in the case are directly established in the sentence of the court of the first instance and the ruling of the court of the second instance, and the evidence was sufficiently studied, but material law was incorrectly applied. 3. A ruling to rescind the verdict of the court of the first instance and the ruling of the

court of the second instance and to transmit the case for reconsideration, if there are serious errors in the establishment of facts and the examination of evidence in the case, or if the punishment must be changed by increasing it.

Here we should consider that if the case of a given court is being examined, the judicial committee transfers it to the criminal college for reconsideration. If the case is being considered by a higher court, then, depending on its complexity, the higher people's court may send it for reconsideration in the first instance to the people's court which passed the verdict or can act on the case itself as a court of the first instance. 4. A ruling to rescind the verdict of the court of the second instance if it is established that the verdict of the court of the first instance was carried out incorrectly, and the ruling of the court of the second instance was also incorrectly carried out. 5. A ruling to dismiss the case and rescind the sentence and ruling if the actions which incriminated the defendant contain no corpus delicti or if amnesty would include the person convicted. In individual cases, where the verdict of the court of the first instance has been rescinded as well as the ruling of the court of the second instance, the court which examines the case in a supervisory capacity may rescind the ruling to turn the case over to the court and send the case for reconsideration to the preliminary investigation stage.

The sentence of the court of the first instance and ruling of the court of the second instance can be rescinded or altered in whole or in part, if any errors or violations are discovered. The question of worsening the status of the defendant in examining a case at the judicial supervision stage in criminal procedure in China is resolved in the following manner: The people's court which examines the case in a supervisory capacity cannot alter the sentence to worsen the status of the person convicted. Seeing from the materials of the case that a mild degree of punishment has been determined by the court of the first instance, which does not correspond to the crime and the sanctions of the law, the supervisory instance is required to rescind the sentence of the court of the first instance and ruling of the court of the second instance (if there has been one), transfer the case to the judicial college for criminal cases for reconsideration as a court of the first instance in order that the punishment, if this is necessary, might be increased by the court of the first instance upon re-examination of the case. The court which examines the case in

the capacity of judicial supervision may pass a judgment which may worsen the position of the person convicted in comparison with the status established during the appellate examination of the case. If the court of the second instance, in examination of the case on the appeal of the person convicted, has decreased the degree of punishment or reversed the verdict of guilty, the court which examines the case in judicial supervisory capacity may reverse the ruling of the court of the second instance, and depending on the nature of the case and its complexity, renew the verdict of the court of the first instance or transfer the case for reconsideration to the court of the first instance.

CHAPTER SEVEN

VERIFICATION AND RATIFICATION OF DEATH SENTENCES

In Chinese criminal procedure a special system of reviewing and ratifying death sentences has been established.[1] The death penalty is viewed in Chinese criminal law as an extraordinary measure of punishment introduced at the present stage of the development of the state. The scope of cases where the death penalty is applied decreases constantly. As early as 1943, during the struggle to root out counter-revolution in Yenan, during the movement to regulate the style and check cadres the Central Committee of the CPC and Mao Tse-tung announced the famous "nine directives," in which the necessity was stressed of delineating serious and minor crimes, the salvation of those finding themselves on the borderline of trouble, and aid for these persons in once again becoming upright citizens. The CPC carried out a number of measures which insured a circumspect approach toward executing counter-revolutionary elements.[2]

In passing death penalties the state always maintained an extremely cautious position. In the struggle to root out counter-revolutionary elements the people's courts passed death sentences in accordance with the law for an extremely small number of counter-revolutionary elements. As early as the movement to stamp out counter-revolution in 1951 certain criminals who should have received death penalty, but the loss from the criminal actions of which had not reached the degree of extreme danger to the interests of the state, were sentenced to death with a delay of two years to be spent in corrective labor in order to ascertain how they would turn out. As a result of this policy many counter-revoltuionaries sentenced to death were spared from the extreme penalty and some of them have already served their sentences.[3]

Implementing the policy of "combining suppression with magnanimity in the struggle against counter-revolution," the people's courts of China are regularly decreasing the application of capital punishment. At the Eighth All-Chinese Congress of the CPC the policy of the party in respect to the application of the death penalty was affirmed once again. "The CC of the Party considers that, with the exception of a very small number of persons who have committed heinous acts and aroused the hatred of the people, against whom it is impossible to avoid applying the death penalty, all other criminals should be spared the extreme penalty . . ."[4]

This status found legislative ratification in a resolution by the Permanent Committee of the ACAPR of 16 November 1956, "On an Indulgent Attitude Toward the Remnants of Counter-Revolutionary Elements in the Cities and their Labor." Section 1 of the Resolution establishes that for counter-revolutionaries who have committed serious counter-revolutionary crimes and against whom the death penalty should be applied, but who have come clean in the admission of their guilt, the death penalty shall not be applied and it is to be replaced by another degree of punishment. In addition, the people's court, in examining the most serious cases, may pass the death penalty, proceeding from the circumstances of the case, with a delay of two years and not with immediate execution (after appeal and review.) At present the framework of the application of the death penalty has shrunk. In addition, the state has passed legislation to regulate very strictly the cases of its application and has established a special procedure of secondary examination and ratification of death penalties, which gurantees the correct application of the extreme penalty. Paragraph 5 of Section 11 of the Law on the organization of people's courts stipulates: "Final death penalties passed by middle and upper people's courts, in the case of objections by the parties, may be sent to a higher court for ratification. Death penalties passed by lower and middle courts, in case they are not appealed and no petition has been submitted to review the case, are executed after they are ratified by middle level courts." The institution of secondary verification and ratification of death penalties, including death penalties with a delay in execution of two years, is a peculiarity of the legislation and judicial practice of China. Before the liberation of the entire country, during the period of the democratic revolution, with the purpose of exercising control over the correctness of the application of the death penalty and the reeducation of malicious criminals, higher courts made a secondary verification of death penalties and in exceptional cases delayed the execution of the sentences. After the liberation of the country death sentences in special categories (counter-revolutionary crimes, robbery, banditry, etc.) could be executed only after they were ratified by the province higher court. Death penalties passed by higher courts in special category cases did not need ratification. All other death sentences were ratified by the People's Supreme Court or branch of the People's Supreme Court.

As a result of the campaign to liquidate counter-revolution the institution of secondary verification of death sentences subsequent to 1953 received legislative

formulation and was included in the Law on the organization of people's courts of the CPR. First instance sentences, passed by local people's courts (lower and middle levels), could be appealed and protested to a higher court. Death sentences passed by middle level people's courts had to be sent to a higher people's court for ratification and came into force in cases whereby the parties did not appeal or protest the decision or request a secondary verification of the sentence. Death sentences passed by first and second instance middle level people's courts had to be sent to the People's Supreme Court for ratification and became valid after the ratification if the parties did not submit an appeal or protest, or request to review the sentence. Only death sentences passed by the People's Supreme Court could not be appealed, and no request could be made for a secondary review. These sentences became valid after they were announced. The parties could request a higher court to conduct a secondary verification of sentences and rulings for the death penalty which had become valid, which had been passed by people's courts of all levels. Death penalties passed by the lower people's court as well as sentences and rulings by middle level people's courts in all cases had to be transmitted to a higher people's court for ratification, after which they were executed if the parties did not submit an appeal or request for secondary verification. Striving for further perfections in criminal procedure and paying particular attention to the correct application of the extreme penalty, the CPC requested legislative organs to review the present system of secondary examination of death sentences, in order to achieve the elimination of the death penalty in the near future: "All cases, without exceptions, where the death penalty is mandatory, should be examined or ratified by the People's Supreme Court. Thus we shall gradually attain a full elimination of the death penalty, which would answer the interests of our socialist construction."[5]

Simultaneously legislative organs and juridical literature brought up the question of the right of those persons condemned to death, on the basis of Section 15, Article 31 of the Constitution of the CPR, to request a pardon from the Permanent Committee of the ACAPR in cases whereby the death sentence was passed or ratified by the People's Supreme Court. The instructions of the party were implemented by a resolution of the permanent committee of 26 July 1957, according to which all death sentences must be passed or ratified by the People's Supreme Court. Secondary verification of death sentences

and rulings is conducted in the People's Supreme Court by the judicial college for criminal cases or special college formed by three permanent judges, usually in closed judicial session without the participation of the parties, according to rules applied in reviewing sentences which have become valid. In cases whereby the court, in conducting a secondary examination, considers it necessary to establish the factual side of the case, the case is examined with the participation of the parties and witnesses according to the rules of trying cases by a court of the first instance. A resolution to ratify a sentence or ruling, passed by the above-mentioned colleges, comes into force only after its final ratification by the judicial committee of the People's Supreme Court. However, decisions are passed and signed in the name of the college which has examined the case.

As a result of the secondary verification of a death sentence, one of the following verdicts can be reached: a) a sentence which ratifies the death sentence and an order to execute the sentence, which is signed by the chairman of the court, if the facts upon which the former sentence is based are clear, sufficient evidence has been collected, the qualification of the crime and the punishment are correct and procedural violations have not taken place; b) a verdict to lighten the sentence, to free from punishment or to declare the defendant innocent in cases whereby the circumstances are not clear, evidence is insufficient, where there are no procedural violations but the qualification of the crime and the punishment are incorrect and it is necessary to lighten the punishment, free the defendant from punishment or declare the defendant not guilty; c) a ruling to rescind the former sentence and to return the case to be re-examined in cases whereby the circumstances are not clearly laid out, evidence is insufficient and serious procedural violations have been committed. The higher people's courts in such a case can examine the case directly. In the aim of eliminating possible errors in death sentences, judicial practice contains a rule directed at correcting erroneous sentences. The people's court which has passed the death sentence, having received it after review, or the people's court which executes the sentence, before its execution, upon finding an incorrect application of material law or an incorrect formulation of facts in the sentence, can transmit the case once more to the court which has ratified the sentence for reconsideration. The people's court can transmit the case also if the condemned person declares his innocence before the sentence is executed.

The people's procurator's office, a representative

of which must participate in executing a death sentence, upon discovering an incorrect application of material law or incorrect formulation of facts in a sentence which has been ratified by a higher court, or the procurator who is present during the execution of a death sentence and who receives a valid declaration of the innocence of the condemned person, have the right and are obligated to submit a protest to the people's court which has ratified the sentence, for reconsideration. In both cases the sentence is not executed and the case is transmitted to the people's court which has ratified the death sentence. The introduction of such a complicated system of secondary examination of death sentences in Chinese criminal procedure insures the correct application of the extreme penalty. After its execution a death penalty cannot be corrected within the framework of judicial supervision, as other sentences for other cases can. Even if the death sentence has been passed with a delay of execution of two years, this punishment is extreme and requires a more careful verification of its application. The incorrect application of the extreme penalty will cause harm to the prestige of the state and will cause the masses to be dissatisfied with court activities. Present procedure eliminates this and guarantees the correctness and accuracy of judicial suppression for the most serious types of crimes. This institution of secondary verification of sentences is an independent stage of Chinese criminal procedure, through which all sentences carrying the death penalty must pass. Secondary verification of death sentences differs from the appeal review stage and judicial supervision. The objects of examination at these stages differ. The object of appeal examination is a verdict or ruling of a court of the first instance. The object of examination within the framework of judicial supervision is a verdict of a court of the first instance and a ruling or verdict of a court of the second instance.

The object of secondary examination of death sentences can be the following: Sentences by courts of the first instance (having entered legal force or not), sentences by courts of the second instance and rulings by the appeal instance. If an appeal or protest is necessary for appeal review, and for the supervisory instance --the decision of a competent organ, in order to begin action on a case, for a secondary verification of death penalties the ratification of the higher people's court is obligatory, irregardless of the wishes of the parties and decision of the competent organ. It is established by law. The people's courts which try appeal cases,

exercise judicial supervision and conduct secondary examination of death sentences differ from one another. In appeal procedure a case is examined in a court of the second instance with respect to the court which has passed the sentence. Within the framework of judicial supervision a case is examined either by the same court or by a higher court. For secondary verification of death sentences, the sentence is examined and ratified by the People's Supreme Court.

CHAPTER EIGHT

EXECUTION OF SENTENCES

1. Organs Which Execute the Sentence

The final stage in criminal procedure is the sentence execution stage. The execution of the sentence is the realization of the content of the sentence which has gone into legal force in the form of instructions to state organs to apply measures of coercion if a verdict of guilty is reached. If a verdict of innocence is reached or a verdict which frees the accused from punishment, it is executed immediately on the orders of the chairman of the court. In such a case, all measures of suppression which were chosen previously in respect to the accused are eliminated. In Chinese criminal procedure the resolution of several questions which arise in executing sentences is part of the procedural activities of the procurator's office, the court and organs of public security. Corrective labor institutions are run by the organs of public security. Corrective labor institutions carry out their functions under the supervision of the people's procurator's office. For questions which have a bearing on judicial activities, these organs receive instructions by the people's courts.[1]

The determined activities of corrective labor institutions are as a continuation of procedural functions. The moment a sentence comes into force is extremely important in criminal procedure, since in the Chinese republic punishment serves not only to make persons harmless who have committed crimes and to prevent them from further commission of crimes, but also to re-educate the convicted person in the spirit of observing the rules of socialist society, as well as to educate the rest of the members of society. "Our corrective labor institutions are not limited to confining criminals in prison in order that they might be hindered from harming society, for it is more important that the corrective labor institutions, during the time a criminal is imprisoned, organize them for participating in productive labor and in the process of labor re-educate them ideologically and simultaneously raise their culture level, instill them with productive habits and actively re-educate them into persons of a new type."[2]

Many types of industrial products produced by corrective labor institutions have played a definite role in furnishing major construction projects with supplies and in supplying the needs of the population. For ex-

ample, in 1953 these institutions produced more than two billion bricks, more than 770 million tiles, which was extremely helpful in constructing many installations. The Peking knitwear mill, which engages prisoners, produced more than 714,000 dozen socks per year. The Tientsin Pipe Fitting Plant, which also engages prisoners, produced 1,700,000 high quality pipe fittings.[4]

Having served their sentences, most criminals make a break with their criminal past. Some of them become qualified specialists. Counter-revolutionary Ke Chang, sentenced to eight years in prison, became an electro-technical specialist and learned almost enough to stand on a par with an engineer. In the district of Foshan two counter-revolutionaries became front rank workers after re-education through labor.[5]

Between November 1955 and February 1956 the People's Supreme Court of the CPR, with the aid of the Ministry of Justice and other state organs, made general conclusions on the practice of the courts in order to determine the nature and types of crimes committed and degrees of punishment applied by the court, as well as in order to give a single set of instructions for applying degrees of punishment by the courts and in executing sentences. Nine thousand two hundred cases from various people's courts in the country were studied, 5500 of which were used for forming the conclusions. In addition, materials were studied such as accounts of cases reported in newspapers and magazines, as well as reports of people's courts of all levels on trying criminal cases. As a result of the study it was determined that the courts applied 132 types of punishment. Unifying the terminology system for punishment and eliminating certain types of punishment the People's Supreme Court instructed all people's courts in China to apply the following ten types of punishment in the future: 1) the death penalty, including the death penalty with a delay of execution of two years; 2) life imprisonment, including life imprisonment with possibility for parole; 3) imprisonment of less than life duration; 4) corrective labor without imprisonment; 5) surveillance; 6) deportation; 7) loss of political rights; 8) confiscation of property; 9) cash fine; 10) public reprimand.

At present the people's courts of the CPR apply the following basic types of punishment[6]: 1) the death penalty; 2) imprisonment (Tu-hsing); 3) short-term imprisonment (Chu-i); 4) surveillance and supervision; 5) reprimand. Supplementary measures of punishment are the following: 1) fine (this can be the basic degree of punishment also); 2) loss of political

rights; 3) confiscation of property; 4) confiscation of potential tools for committing crimes, objects removed from circulation and stolen property. Deportation can be used for foreign criminals as the basic or additional degree of punishment. Additional punishment can be applied only together with basic punishment. In respect to criminals who have already been condemned, depending on the nature and seriousness of the crimes committed by them, confinment in prisons and corrective labor camps is applied for re-education through labor.[7] Execution of a sentence should not lower human dignity. Cruelty and application of physical coercion is forbidden.[8]

Corrective labor is not used presently in the CPR as a separate degree of punishment, since in being deprived of their freedom prisoners must engage in corrective labor. Upon establishing supervision as a degree of punishment, the condemned person is also required to work. In accordance with the degrees of punishment applied in the CPR organs have been established which execute sentences. These are the following; the people's court, organs of public security, prisons, corrective labor camps and correctional colonies for juvenile offenders, as well as places of preliminary imprisonment if a criminal has been sentenced to up to two years of loss of freedom, and it is not expedient to send him to a corrective labor camp.[9] In the property section sentences and rulings in criminal cases are executed in accordance with the procedure of executing verdicts in civil cases. With this goal in mind, the local people's courts contain bailiffs who conduct the executions of verdicts and rulings in civil cases and sentences and rulings in criminal cases for those sections concerning property.[10] Sentences passed in cases examined by courts of the second instance are usually transmitted for execution to the people's courts where the cases were examined in the court of the first instance.

2. Procedure of Executing Sentences and Legal Questions Arising at this Stage

The death penalty is a temporary and exceptional measure of punishment and is applied only in respect to criminals who have committed the most serious crimes and against which the broad masses have aligned themselves with feelings of hatred and contempt. As a rule the death penalty is not applied for women who are pregnant during the trial and to persons who were under the age of 18 when the crime was committed. After the execution of a sentence, the people's court informs the People's

Supreme Court which ratified the death sentence, and also informs the relatives that they may take the body for burial. At the same time the people's court prepares posters announcing the execution of the death sentence with a description of the death sentence and the crimes committed by him, and posts these announcements along the city or village streets where the court is located. If the court, having decided on the death penalty, does not consider it necessary to execute the sentence immediately, it can indicate in the sentence a delay of two years for execution of the death penalty, obligating the criminal to forced labor under the supervision of the administration of the place of confinement, in order to establish whether he will be able to rehabilitate himself. Ratification of the death penalty with delay of execution of two years was conducted by higher provincial courts and the People's Supreme Court. At present, after the Eighth Congress of the CPC these sentences are ratified only by the People's Supreme Court. The passing of a death sentence with a delay of two years for execution is explained by the fact that "a policy of a combination of suppression with magnanimity is the only correct policy of our party and our state in the struggle against counter-revolution, the goal of which is victory over our enemies and defense of the people. This policy is the only correct one because it corresponds to actuality, whereby the camp of the counter-revolutionaries is not solid, where this camp, alongside the most bitter enemies of the people, contains elements which express the wish to confess their crimes honorably and once again become upright citizens, as well as elements which can be forced to confess their crimes and become upright citizens."[11]

The consultation section of the newspaper Peiching Jenmin Jihpao printed an article on 3 June 1956 in the newspaper Chungching Hsinhua Jihpao under the title "Why in respect to certain counter-revolutionary criminals the following policy is applied: 'The death penalty, execution delay of two years, forced labor, final resolution of the question depending on the conduct of the prisoner?'" The article indicated the following in particular. The reason for the sentencing of certain counter-revolutionaries to death with a delay of execution for two years consists in the fact that these criminals, deserving the death penalty, have not committed bloody crimes, and national hatred to them is not at a high level, while the harm which they have caused state interests has not achieved a severe degree; for this reason the policy

extends to them of "temporarily not executing the death penalty and delaying its execution two years, with forced labor," and this gives them one last opportunity to rehabilitate themselves. If after these two years the counter-revolutionaries have labored honorably and honestly, the death penalty can be replaced by life imprisonment; if in the future they continue to conduct themselves with improvement, there is an opportunity for a further lightening of sentence. If they have behaved poorly during the test period and have not taken to re-education, the death penalty can be executed at any time.

The people's government forces persons condemned to death with a conditional* date of execution to participate in productive activity. This is both a punishment and re-education for these criminals. Conditional sentencing to death is applied chiefly to criminals who have openly repented of the crimes committed by them or have expiated their guilt by subsequent work. These persons are confined under guard and serve their sentence in prisons.[12]

If during the two year period designated by the court the criminal openly confesses his crime and rehabilitates himself, on the basis of the report made by the administration of the place of imprisonment to the proper organ of people's public security, the People's Supreme Court may pass a ruling to replace the death penalty by life imprisonment or imprisonment of a term from 15 to 20 years. If the criminal has not become rehabilitated, the People's Supreme Court can pass a ruling based on the report by the administration of the prison and organ of public security, by which the date for executing the sentence can be postponed for one or two years more, or the sentence can be executed immediately. The period of postponment for executing a death penalty is calculated from the day the sentence comes into force. In case a death penalty is replaced by imprisonment with a definite term indicated, this is calculated from the day the ruling to rescind the death penalty comes into legal force.

Loss of freedom** As has been indicated, loss of freedom is divided into two types: a) short-term loss of freedom (Chu-i), which is determined from five days to six months duration, and b) loss of freedom (Tu-hsing). Loss of freedom (Tu-hsing) is divided into loss of freedom with a definite period which can range from six months to 15 years, and life imprisonment. Persons who are under 18 years of age when a crime is committed are not sentenced to life imprisonment. Criminals who are sentenced to short-term loss of freedom and loss of free-

*conditionally suspended sentence **imprisonment

dom are deprived of their political rights during the period served in prison. Depending on concrete conditions the people's court, proceeding from exceptional circumstances in a case, have the right to temporarily postpone the execution of a sentence and to decide on a conditional sentence to short-term loss of freedom (Chu-i) or to loss of freedom (Tu-hsing) for a period of up to three years. The term of conditional conviction must be greater than the term provided by the sentence, but no greater than five years and no less than six months. The term of conditional conviction is calculated from the day the sentence comes into force. In passing a sentence for conditional conviction, supplementary punishment must be executed. A determination of the circumstances under which conditional conviction can be replaced by loss of freedom or under which the sentence may not be executed after the termination of the test period, is of great significance from the viewpoint of implementing conditional conviction.

In this respect the report made in 1956 by Kung Cha and Chu Jun at the scientific conference of the juridical faculty of the Peking Chinese People's University is of interest. The authors of the report present varying viewpoints of Chinese jurists on this problem. In summation they come to the conclusion that, in correspondence with the purposes of conditional conviction, the people's court may rescind the suspended sentence and replace it by loss of freedom when the parolee commits another crime during the parole period, independent of the gravity of this crime and as to whether the crime was premeditated or unpremeditated. In case the conduct of the parolee was not faultless during the period of probation, but he had not committed another crime, the parolee must be freed from punishment after the period of probation. Kung and Chu indicate further that in their opinion it is necessary to develop a definite system of watching persons with suspended sentences during the probation period, in order to be able to form a judgment on their behavior. In addition they object to the introduction of supervision of persons under suspended sentence during the probation period, since supervision is an independent measure of punishment in Chinese criminal law.

If the person whose sentence has been suspended does not commit a new crime during the probationary period, which is punishable by short-term loss of freedom and greater, the sentence is not executed upon termination of the probation period. If the person commits another crime which is punishable by short-term loss of freedom or more, the suspended sentence is replaced by loss of freedom. In case of a crime committed out of

carelessness, the suspended sentence is not rescinded. Persons sentenced to life imprisonment are kept under guard. Watch is kept over their conduct in prison, and in particular, during forced labor. Judging from their conduct during their probationary period, the question is resolved as to whether the sentence should be executed or lightened. Persons sentenced to conditional loss of freedom with a definite term indicated, during the course of the probation period, according to concrete circumstances, can be left at large, however, supervision is set up over them and their behavior is watched. Criminals sentenced to conditional loss of freedom with obligatory administrative supervision during the suspended sentence period, as a rule are freed from supervision after the term has been completed.[13] If during the period of the suspended sentence they do not rehabilitate themselves or repent in their crimes, the organ carrying out the supervision, upon recognizing it as expedient to prolong the period of supervision or to execute loss of freedom, may introduce its proposal for the examination of the people's court of the same level. Supervisory organs act in an analogous manner in cases whereby they consider it possible to cease supervision before the period has terminated.

The people's court, after a sentence calling for loss of freedom has come into force, sends an act of execution to the place of confinment where the criminal will serve his term. In order for the place of confinment to learn of the circumstances of the crime and of the term of the sentence, the people's court must also send the sentence to the place of imprisonment. Short-term imprisonment and imprisonment is calculated from the day the sentence is executed, that is, from the day on which the prisoner is delivered to the place of imprisonment to begin his term, as established in the sentence. The time spent in prison previous to the passing and execution of the sentence is counted as one day of pre-trial imprisonment for one day of imprisonment. In certain cases execution of a sentence for imprisonment can be temporarily halted. Practice has established that a ruling to postpone execution of a sentence must be passed by the people's court which has tried the case in the court of the first instance. Such a ruling is delivered to the prisoner as well as to the organ of public security where the prisoner is located or the institution, enterprise or social organization where he worked. These organizations must set up watch over the convicted prisoner. At the same time they are required to inform the people's court which has passed the ruling, after the reasons for postponing the sentence have lost their validity, of the possibility of taking the convicted person

into custody and executing the sentence. During the war, in respect to members of the armed forces sentenced to jail terms or imprisonment, but not deprived of their political rights, according to a ruling of the people's court which passed the sentence, the execution of the sentence could be postponed for the duration in order that they might expiate their crime with services to their native land. If during the period of military operations the convicted person made a substantial contribution toward the victory over the enemy, on the report of the command, the people's court which passed the sentence, or the higher people's court could free the convicted person or lighten his sentence.

Article 37 of the Regulations on re-education through labor provides that imprisonment under guard is forbidden, with the exception of persons who have committed serious counter-revolutionary and other serious crimes, in cases of: a) mental illness or serious infectious disease; b) serious illness, when confinment under guard would be dangerous for the prisoner; c) pregnancy or within 6 months after childbirth. Persons in these categories, depending on specific circumstances, are to be placed in a hospital by the organs in whose custody they have been remanded or they are to be put in someone's custody or sent to another suitable place. Article 60 of the Regulations stipulates cases whereby the convicted person can be transferred on recognizance beyond the place of imprisonment. The time during which the criminal has been on recognizance is included in the term. The prisoner can be transferred to recognizance: a) if he is seriously ill and requires treatment outside the place of imprisonment; however, this does not include dangerous criminals who have committed serious crimes; b) if he is beyond middle age--55 years and older--or is an invalid who has been in prison less than 5 years and has ceased to be dangerous to socity.

The resolution of the question of decreasing a sentence and of parole is within the competence of the people's courts. A higher people's court which is situated in the vicinity of a corrective labor institution can decrease the term of punishment on the petition of this institution if the prisoner who has been sentenced to life imprisonment or a definite prison term repents of his crime while imprisoned and indicates his rehabilitation by his behavior (does an honorable deed, etc). The prison term can be decreased several times depending on the behavior of the prisoner. Corrective labor institutions, with the sanction of higher people's courts at the place of imprisonment, may free a prisoner sentenced to life imprisonment or long-term imprisonment, if the prisoner has truly re-

pented and has become re-educated, because of which he no longer presents a danger for society. The procedure of lightening punishment and parole is stipulated by Article 70 of the Regulations on re-education through labor. The administration of the prison would transmit its resolution to life imprisonment or parole a prisoner to the suitable organ of public security for examination and approval. The organ of public security, upon agreeing with this proposal, would receive the permission of the local, provincial, city people's court and the resolution would be executed. On 30 January 1955 the Ministry of Public Security of the CPR issued instructions "on the obligatory observance of the Constitution and the Laws by all organs of public security of varying levels." Paragraph 5 provides that the organ of public security, receiving a petition from the administration of the prison to decrease the prison term or to effect parole, must transmit this to the people's procurator's office for examination and approval. The people's procurator's office transfers the case to the people's court, which passes a final decision. The people's procurator's office may, on its own initiative, request the examination of the question of decreasing the term or paroling the prisoner. The term of parole is calculated from the day the ruling is made to go through with the parole. If the parolee does not commit a new crime during the probation period, the prison sentence is dropped. If he commits a new crime punishable by imprisonment, the parole is broken and the people's court fixes a term of imprisonment for the new crime with consideration of the portion of the previous sentence which had not been served. In case of a crime caused through carelessness the parole is not revoked.

Article 72 of the Regulations on re-education through labor provides that in case major counter-revolutionary criminals, bandits-recidivists, thieves-recidivists and other convicts do not wish to labor actively during the period of corrective labor, and if they violate rules consistently, indicating that they have not become re-educated and that upon being released they will continue to present a danger for the public, the corrective labor institution can, before the term is up, report its conclusions and request the suitable organs of people's public security to examine this question. After the local people's court, on the report of the organ of public security, passes a sentence to lengthen the term of imprisonment, further labor re-education is carried out on these criminals. Until recently this found rather broad application, a fact which is explained by the political and economic situation in the country. People's demo-

cratic authority, when it was in the initial stages, was not yet particularly firm, and the forces of counter-revolution were extremely active. Insufficient experience had been gained in re-educating criminals through labor. Now things have changed. The state has achieved marvelous success in socialist construction and socialist reformation of industry, agriculture and trade. The question of the further strengthening of socialist legality has been placed on the agenda. Correctional labor institutions have gathered rich experience. Counter-revolutionary elements in the country have mostly been destroyed. Therefore the norms of Article 72 of the Regulations on re-education through labor are not applied, and after the term of imprisonment the convicts are freed if they have committed no new crimes in prison.

Establishment of supervision. (Conviction "under watch").* Procedure of carrying out punitive measures "under watch" and the resolution of various questions connected with the execution of this punitive measure are elucidated in several sources. These include the following: "Written directives of the central inspection commission on observing the economy, on punitive measures for embezzlement, waste and elimination of bureaucratism" of 11 March 1952, the report by the deputy chairman of the political-legal committee of the central people's government, Peng Chen, on draft regulations on punishment for corruption in the CPR of 18 April 1952, the regulations on punishment for corruption of 18 April 1952, the temporary rules of supervision of counter-revolutionary elements, which was passed by the State Council on 27 June 1952, and the resolution of the 51st Session of the Permanent Committee of the ACAPR of 16 November 1956. This punitive measure was previously called by different names by the various people's courts: "Under the supervision of an institution", "remission to the supervision of the district administration," "remission to the supervision of the masses," etc. The People's Supreme Court instructed that this punitive measure should be named "under watch." The maximum term of supervision was established as 3 years and the minimum--3 months. At present a period of from one month to one year has been established. The people's court which passes a sentence placing the defendant "under watch," sends the sentence when it comes into force, together with written notification of the establishment of supervision to the organs of public security at the place where the criminal is located, to the local administrative organs, institutions, enterprises and social organizations where the defendant

*/the Russian term is "pod kontrol'"/

worked, for execution. Persons who were employed, for whom this punitive measure has been indicated, remain at their former place of employment, but carry out corrective labor. During the term of conviction they have no official job, but the administration makes it possible for them to study and provides the necessary means for existence, supervising their life and work. Supervision in respect to persons who are not working is carried out by the local people's committee, the local public security branch or militia station--depending on the instructions. However, the court may instruct the person convicted to work at a specific case.

Persons temporarily"under watch" are automatically deprived of the following political rights: 1) active and passive voting right; 2) right to occupy a position in a state institution; 3) right to enter the ranks of the people's armed forces and people's organizations; 4) freedom of speech, press, assembly, unions, correspondence, street processions, demonstrations, resettlement; 5) right to possess and receive awards and honorary titles. The organ exercising supervision reads the sentence establishing supervision at suitable mass meetings (institutions, enterprises, villages, blocks, cities, etc.) in order that each citizen might watch the behavior of the person convicted and report unlawful activities by him. The term of punishment is calculated from the day when the sentence was put into execution, that is, from the day the notification from the people's court on the establishment of supervision was received by the organ which carries out this supervision.

During this period the person convicted must observe the following rules: 1) once a month he must report on his activities to the organ exercising supervision; 2) if it is necessary to leave his permanent place of residence temporarily, or to leave work, he must receive permission from the organ which is carrying out the supervision. In case the person on parole violates any of the rules set up, the people's court which has passed the sentence, or the court at the place of residence of the convicted criminal, may, upon representations by the organ carrying out the supervision, depending on the circumstances of the case, replace the remaining period of parole by short-term imprisonment or imprisonment based on two days of parole for each day of imprisonment. If, after the period of parole is over, the parolee commits another crime or it is established that he has committed a crime which had not been revealed earlier, the case is sent for the consideration of the people's court with instructions that the parolee be punished and with the number of days

already served indicated. After the term is completed, the head of the organ which is carrying out the supervision informs the parolee of this and makes a public announcement of the fact that the period of parole has been completed. In addition, a paper is drawn up to this effect and transmitted to the people's court which passed the sentence. If the parolee has conducted himself well during the period of parole, has actively worked or has earned merits which expiate his guilt, and if the organ which is effecting the supervision considers it expedient to take off the parole before the period is up, this organ submits a proposal for the approval of the people's court which has passed the sentence, or for the approval of the court closest to the residence or place of work of the parolee. The temporary rules of supervision over counter-revolutionary elements also provide supervision over counter-revolutionaries not as a measure of punishment but as a measure of re-educating them to become new persons by applying definite measures of coercion to them (limitation of activities and ideological education under the control of the government and the observance of the masses.) This measure was introduced in respect to counter-revolutionaries who in the past had committed crimes and after their liberation had not repented and had shown no signs of repenting, but who had been engaged in counter-revolutionary activities which called for punishment. As a result of the fact that the degree of public danger of their crimes did not require arrest or conviction, they were placed under supervision. The temporary rules go into detail on the categories of counter-revolutionary elements which must be placed under supervision (Article 3). The right to establish supervision over counter-revolutionaries belongs to county, city and higher organs of public security (Article 11 of the Temporary Rules). On 16 November 1956 the Permanent Committee of the ACAPR, at its 51st session, passed a resolution, according to which in respect to counter-revolutionary elements and other criminals, supervision is appointed only by the people's court, and the sentence is transmitted for execution to organs of public security.[14]

Reprimand. Reprimand is public censure applied by the people's court to a person who has committted a crime which presents no great public danger. The sentence of a criminal who is to be reprimanded is announced by the people's court before the masses at the place of residence of the criminal or at the scene of the crime.

Fine. As has been indicated, a fine may be a basic as well as additional measure of punishment. The size of a fine is determined by the court, depending on the nature

of the crime, the person and property status of the accused. The fine cannot be less than one yuan. A fine is paid in whole or in installments in a specified period. After this period and in case the fine has not been paid, it is collected forcibly by the bailiff. In cases whereby the criminal cannot pay the fine due to real poverty, the court, depending on the specific circumstances, can pass a ruling to lower the fine or free the criminal from payment.

Loss of political rights was previously viewed as a basic and supplementary measurement of punishment, could be full and partial, and was established for a specific period or for life. At present loss of political rights is considered as a supplementary measurement of punishment and can be applied fully and partially for a period of from one to five years. Loss of political rights consists in the following: 1) the right to vote and be elected; 2) the right to occupy top posts in government organs; 3) the right to occupy responsible positions in public organizations; 4) the right to possess state honors, medals, military and honorary titles. Upon passing sentence the court must announce removal from office, indicated in paragraphs 2 and 3, if the criminal is occupying any of these positions at the time the sentence is pronounced. If the defendant possesses state honors, medals, or militiary and honorary titles, the sentence of the court should indicate the deprivation of these in view of the loss of political rights. The loss of political rights is applied obligatorily in punishment for counter-revolutionary activities. In other cases the court, at its own discretion and on the basis of the instructions provided by law, may sentence a defendant to loss of political rights if imprisonment for a period of more than five years is indicated in the basic punishment. The term of loss of political rights calculated from the day the basic measure of punishment is put into execution or from the day the parole begins. However, if the basic punishment is to be "under watch" the loss of political rights take place jointly with the basic measurment of punishment. Upon sentencing a loss of political rights, the people's court which passes the sentence sends written instructions to execute the sentence and a copy of the sentence to the organ of public security closest to the place of residence or work of the criminal, to the local administrative organs or institutions, enterprises or social organizations where the criminal was employed.

Confiscation of property takes place when the sentence by the people's court deprives a convicted person of part or all of his personal property. Upon confiscat-

ing property, the members of the family of the criminal must be left with the necessary means of production and means of existence. Claims by creditors emanating from the legal obligations of the criminal and arising before the confiscation order, in case of necessity, can be at the request of creditors satisfied at the expense of the confiscated property.

Confiscation of implements of crime, objects removed from circulation and stolen property consists in confiscation by the order of a people's court of the following: 1) forbidden objects discovered to be in the possession of criminals; 2) objects used for or prepared for committing crime; 3) property acquired by illegal methods. Forbidden objects are liable to confiscation irregardless of whether they belong to the criminal or not. The other objects indicated can be confiscated only in case they belong to the criminal. Confiscation of tools of crime, objects removed from circulation and stolen property can be ordered by the court as an independent measure of punishment in respect to criminals freed from punishment. The execution of a sentence for confiscation of property and confiscation of tools of crime, objects removed from cirulation and stolen property takes place at the instructions of the people's court which has passed the sentence, the bailiff jointly with the organs of public security. Resolution of various types of questions and arguments, as well as elucidation of questions arising in executing sentence and having no bearing on the sentence itself, must be carried out by the people's court which has passed the sentence. If lack of clarity and errors are evident in the sentence itself, that is, questions of guilt and punishment, correction of the sentence can be made only within the framework of judicial supervision.

3. Supervision Over Sentence Execution

Supervision over sentence execution is exercised by the people's procurator's office which makes sure that the execution of sentences which have come into force takes place within the proper period and in exact correspondence with the content of the sentence and demands of the law. "Supervision over the execution of sentences in criminal cases and the correspondence to the law of the activities of correctional labor institutions" is exercised by the local people's procurator's office, according to Article 4 of the Law on the organization of the people's procurator's office. Supervisory functions in relation to executing sentences and the legality of the activities of correctional labor institutions are carried

out by the people's procurator's office by means of examining appeals and petitions by convicted persons and other persons, as well as by personal verification by the procurator of the procedure of executing sentences in the courts and prisons.

In a case whereby, while supervising the execution of a sentence, the people's procurator's office reveals a violation of the law in the activities of the people's courts, correctional labor institutions and other organs executing the sentence, it informs the organs of the violation discovered and requests that this violation be eliminted. If this request is not carried out and the violation of the law is not eliminated, the procurator of the procurator's office informs the higher procurator's office of this in order to submit a protest to the higher instance.[15] Upon discovering errors in the sentence which is being executed, concerning the body of the sentence itself, that is, the question of guilt and punishment, the people's procurator's office may protest the sentence within the framework of judicial supervision.[16] The people's procurator's office also has the right to halt the execution of the sentence.

FOOTNOTES

INTRODUCTION

1. Khrushchev, N. S., O kontrol'nykh tsifrakh razvitiya narodnogo khozyaystva SSSR na 1959-1965 gody (Control Figures on USSR Economic Development for 1959-1965), Moscow, 1959, page 128.
2. Mao Tse-tung, Selected Works, Vol 1, pages 65-66.
3. ibid., Vol 4, page 469.
4. Hu Chiao-mu, Thirty Years of the Chinese Communist Party, Peiping, 1956, page 61.
5. See Ma Hsi-wu, "People's Justice in the Shensi-Kansu-Ningsia Border Region at the Stage of the New Democratic Revolution", Chengfa Yenchiu (magazine), 1955, No 1.
6. See the article "Justice Operations in the Area" (newspaper Tefang Jihpao, 14 October 1930 of the Chinese Republic).
7. This work does not include criminal procedure in the province of Taiwan, a temporarily occupied territory of the CPR.
8. Lately very interesting discussions have being going on in the Chinese press. The principle of "presumption of innocence" has been subjected to sharp criticism (see Yu-su', "Criticism of the Bourgeois Principle of 'presumption of innocence'", in the magazine Fahsueh, 1958, No 1; Li Pao-min, "'Presumption of Innocence' should not be Part of our Criminal Procedure", Fahsueh, 1958, No 1 and others).

   On the pages of legal journals Chinese jurists are defending and developing the conception of the principle of the independence of the court in trying cases (see articles by He Fan, Jo-chuan, Li Mu-an, Kang Shu-hua in the magazine Chengfa Yenchiu, 1958, No 12 and others).

   Extremely interesting are the articles on the status of the accused in a criminal action (see Wu Lei, an analysis of the article "The Place of Appeal by the Accused in our country's Criminal Procedure", Chengfa Yenchiu, 1958, No 2; Chang Huei, Li Chang-chun, Chang Tsem-pei, "This is not the Basic Principle of Criminal Procedure in our Country" (critique of the article by Chu-fu, "The Place of Appeal by the Accused in Criminal Procedure"), Chengfa Yenchiu, 1958, No 4; Li Yueh-po, "Has not the Principle of 'Favor' been Borrowed from Old Law?", Chengfa Yenchiu, 1958, No 2.

Considerable attention has been devoted to the work of attorneys, their relation to the defendant and their role in the trial (see Su I, "Should the Counsel for the Defense Expose the Crime or Defend it?", Chengfa Yenchiu, 1958, No 2; Lin Tse-chiang, "Once and For all Censure Bourgeois Attitudes toward the Work of People's Attorneys", Fahs ueh, 1958, No 2; Sung Hsing-chun, "To Correctly Implement the System of Defense in Legal Work", Fahsueh, 1958, No 8 and many other articles). The above questions have received as yet no final solution in Chinese legal literature, nor in the activities of the organs of the court, procurator's office and attorneys' offices. Therefore the author limited his perusal of problems of court proceedure to 1957, since in his opinion it was this period which saw the creation of the basic institutions of criminal proceedure.

CHAPTER ONE

1. Materialy VIII Vsekitayskogo s"yezda KPK (Materials of the VIII All-Chinese Congress of the CPC), Moscow, 1956, pages 55-56.
2. ibid., page 481.
3. ibid., page 242.
4. See the article "Dostizheniya v oblasti zakonodatel'stva" (Achievements in the Field of Legislation), Druzhba (Friendship), 8 August 1957.
5. Collection of Laws and Enactments of the Central People's Government for 1949-1950, Peiping, 1952, pages 179-180.
6. "Dostizheniya v oblasti...", op. cit.,
7. Sun Kuo-hua, "On the Role of People's Democratic Legality in Building Socialism", Chengfa Yenchiu, 1955, No 1.
8. Materialy VIII ..., op. cit., page 56.
9. Sun Kuo-hua, op. cit.
10. Materialy VIII ..., op. cit., page 56.
11. See Article 3 of the Law on the organization of the People's Courts in the CPR and Articles 3,4,and 5 of the Law on the organization of the People's Procurator's Office of the CPR.
12. See Articles 79 and 81 of the Constitution, Article 12 of the Law on the organization of the People's Courts and Articles 3 and 4 of the Law on the organization of the People's Procurator's Office.
13. See the speech of Tung Pi-wu at the Third Session of the All-Chinese Assembly of People's Representatives (ACAPR) -- First Convocation -- in Jenmin Jihpao, 27 June 1956.

14. See Shen Chi, "Strengthen State Legality by All Judicial Activities", Kuangming Jihpao, 24 July 1956.
15. At present the province of Kwangsi has been transformed into an autonomous region.
16. See the speech by Chang Ting-cheng at the Third Session of the ACAPR -- 1st Convocation -- in Kuangming Jihpao, 24 June 1956.
17. See Kou Ching-yen, "Increase Vigilance, Continue the Struggle to Stamp Out Counterrevolution", Nanfang Jihpao, 18 August 1956.
18. These figures were contained in the report by Chen Yang-shan, "Methods of Combatting Criminals in the CPR", made in 1957 (See Kuangming Jihpao, 1 March 1957 and a communication by the agency "Hsinhua" of 28 February 1957).
19. Specific categories included the following:
    1. Counterrevolutionary cases. If the number of cases tried in 1951 is taken as 100%, the number tried in 1956 amounted to 32.4%.
    2. Cases of crimes by functionaries in the apparatus of government. If the figures for 1952 are taken as 100%, they were 28.5% in 1956 (actually they were even less, since statistical figures for 1956 include not only employees of state institutions but all white-collar workers).
    3. Cases of theft of state property by bourgeois elements. It the figures for 1954 are taken as 100%, they were 11.1% in 1956 (prior to 1954 there were no figures kept for these crimes).
    4. Cases of robbery, theft, swindling and damage to public property. If the figures for 1950 are taken as 100%, the figures for 1956 are 27.5%.
    5. Cases of cruelty and murder of women. If the figures for 1953 are taken as 100%, they amounted to 36% in 1956.
20. See Chang Ting-cheng, op. cit.
21. See Gudoshnikov, L. M., Sudebnyye organy KPR (Judicial Organs of the CPR), Moscow, 1957, page 68.
22. See Tung Pi-wu's speech at the Second Session of the ACAPR in Kuangming Jihpao, 23 July 1956.
23. See Li Chi, "Struggle to Strengthen People's Democratic Legality in our Country", Jenmin Jihpao, 6 November 1956.
24. See "Directive of the CC of the CPC on the Abrogation of the Kuomintang Complete Book of Six Laws and on the Establishment of Principles of Justice for the Liberated Regions", 1949 (February).
25. See Jenmin Jihpao and Kuangming Jihpao, 12 February 1957.

26. Lenin, V. I., Sochineniya (Works), Vol 27, page 236.
27. See Article 6 of the Te mporary Organizational Regulations of the People's Courts of the CPR, passed on 3 September 1951.
28. Here as later on one should keep in mind that the First Session of the ACAPR -- 2nd Convocation -- passed a resolution on the abolishment of the Ministry of Justice and of the transfer of its functions to the People's Supreme Court (Izvestiya, 29 April 1959).
29. See Gudoshnikov, op. cit., page 54.
30. See Kuoyuan Kungpao (State Council Herald), 1956, No 30 (56), pages 807-808.
31. See Article 59 of the Constitution and Article 32 of the Law on the organization of the Peop le's Courts.
32. See the resolution of the 23rd Session of the Permanent Committee of the ACAPR of 8 November 1956.
33. See Article 33 of the Law on the organization of the People's Courts.
34. See Article 65 of the Constitution and Article 32 of the Law on the organization of the People's Courts.
35. See Article 34 of the Law on the organization of the People's Courts.
36. See Kuangming Jihpao, 23 July 1955.
37. Jenmin Jihpao, 27 June 1956.
38. See Jenmin Jihpao, 9 May 1956.
39. See Gudoshnikov, L. M., "Judicial Reform of 1952-1953 and Further Democratization of the Judicial System of the CPR", Sovetskoye gosudarstvo i pravo (Soviet State and Law), 1957, No 8, page 58.
40. See the speech by Shih Liang at the 2nd Session of the ACAPR -- 1st Convocation -- in Jenmin Jihpao, 30 July 1955.
41. See Chen Hsi, "How the He Chiang County People's Court Works", Jenmin Jihpao, 14 January 1953.
42. See Successes of the New China in the Field of Political-Legal Work in Five Years, Li Chi, editor; Peiping, "Jenminchupanshe".
43. See the article "People's Courts of the provinces of Kiangsu and Kwangtung Developing Legal Propaganda", Kuangming Jihpao , 10 September 1955.
44. ibid.
45. See Collection of Reports on the Work of the People's Government for 1950, Peiping, 1957, page 81.
46. See Chungching Jihpao, 1 June 1955.
47. Hunan Province Juridical Herald, 1955, No 9.
48. See Article 7 of the Law on the organization of the People's Courts.
49. See Article 7 of the Law on the organization of the People's Courts.

50. From materials of the Peking Higher People's Court.
51. See Article 7 of the Law on the organization of the People's Courts.
52. See the resolution of the Permanent Committee of the ACAPR of 8 May 1956 "On the Opportunity for Persons Deprived of Political Rights to Act as Counsel for the Defense", Jenmin Jihpao, 9 May 1956.
53. See the article "Growth in the Number of Lawyers' Offices", Druzhba, 7 July 1957.
54. See Article 91 of the Law on the organization of Judicial institutions in the Chinese Republic.
55. See the article "National Minorities in China" in the magazine Shihshihouchieh, 1956, No 17.
56. See Chapter VI of the General Program of the People's Government.
57. See Jenmin Jihpao, 14 August 1952.
58. Liu Shao-chi, Draft Constitution for the CPR, Peiping, 1954, page 58.
59. See Jenmin Jihpao, 16 October 1954.
60. On the question of the principle of national language see Shih Pei-chao and Yang Jung-hsin, "The Great Significance of the Principle of National Language for our Country's Legal System" (Chengfayenchiu, 1955, No 6); Yang Te-ming, "Why the Principle of National Language Finds Application in our Country's Legal System" (Chengfayenchiu, 1956, No 6).
61. See Liu Kun-ling, "The Concept 'The People's Court is Independent in Trying Cases and Subordinate only to Law' ", Chengfayenchiu, 1955, No 1.
62. See Jenmin Jihpao, 16 October 1954.
63. See Article 4 of the Law on the organization of the People's Procurator's Office.
64. See Articles 9 and 10 of the Law on the Organization of the People's Courts.
65. See Legal Herald, 1955, No 1, publication of the People's Supreme Court of the CPR.
66. See Article 9 of the Law on the organization of the People's Courts.
67. See Article 12 of the Law on the organization of the People's Courts.
68. See Article 85 of the Constitution and Article 5 of the Law on the organization of the people's courts.
69. Liu Shao-chi, op. cit., pages 54-55.
70. See Article 79 of the Constitution. It should be mentioned that military courts are placed within the system of the Ministry of Defense but that they are within the scope of all the laws and single trial proceedure.
71. See the article "Toward an Understanding of the Principle "All Citizens are Equal Before theLaw', Chengfa

Yenchiu, 1955, No 1.

72. See "Collection of Decisions in Criminal Cases" (Hsin-An-Huei-Lan), Vol XXVI, page 12.
73. See the speeches of Chang Ting-cheng and Tung Pi-wu at the 3rd Session of the ACAPR -- 1st Convocation -- (Kuangming Jihpao, 24 June 1956 and Jenmin Jihpao, 27 June 1956).

CHAPTER TWO

1. See Chao Wen-lung, "Some Problems on the Test Execution of Normalized Preliminary Investigation Proceedure", Chengfa Yenchiu, 1955, No 2.
2. See the decision of the 15th session of the Judicial Committee of the People's Supreme Soviet.
3. In Chinese the words "procurator" and "investigator" are rendered by the same word, "chien-cha-yuan". Therefore the use of the word "investigator" in this work is an arbitrary one and accepted by the author as the most common one. Their functions are different.
4. See Paragraph 3 Article 4 of the Law on the organization of the people's procurator's office, as well as Li Ching-hsi, "My Concept of the Work of the People's Procurator's Office in Investigation and Supervision", Chengfa Yenchiu, 1957, No 2.
5. See, for example, Article 13 of the Law on the Organization of the People's Procurator's Office.
6. See Li Ching-hsi, op. cit.
7. If the investigator must conduct any investigation of an urgent nature before the institution of criminal proceedings, he does so and then draws up an enactment instituting criminal prodeedings.
8. See Chao Wen-lung, op. cit.
9. ibid.
10. See Tai Ching-chun, "Organs of Public Security, the People's Procurator's Office and the People's Court Should Come Closer to the System of Mutual Control and Responsibility in their Sector of Work", Kuangming Jihpao, 12 February 1957.
11. Kou Ching-yen, op. cit.
12. See Article 19 of the Regulations for Punishing Counter-revolutionary Activities.
13. See Article 8 of the Temporary Regulations for Punishing the Undermining of the State Monetary System.
14. See P 3 Article 16 of the Temporary Regulations on Guarding State Secrets.
15. See Chang Ting-cheng, "The Struggle against Counter-revolution and the Solution to the Problem of Japanese

War Criminals Located in our Country", Kuangming Jihpao, 24 June 1956.

16. See Article 14 of the Regulations on Punishing Counter-revolutionary Activities.
17. See the speech by the Minister of Public Security of the CPR, Lo Jui-ching at the VIII All-Chinese Congress of the Party, Materialy VIII Vsekitayskogo S"yezda KPK (Materials of the VIII All-Chinese Party Congress), Moscow, 1956, page 262.
18. See Article 11 of the Regulations on Arrests and Detentions.
19. See the speech by Tung Pi-wu at the 3rd Session of the ACAPR -- 1st Convocation --, Jenmin Jihpao, 27 June 1956; see also P 5 of the Basic Regulations for the plan for the development of agriculture in the CPR for 1956-1967 (plan accepted by the CC of the CPC); Lo Jui-ching, op. cit.
20. ibid.
21. ibid.
22. See Ke Feng, "The Significance of Evidence and the Use of the Testimony of the Accused", Political-Legal Science, 1956, No 3 (Shanghai); Kao I-han, "How to Evaluate correctly the Testimony of the Accused", Kuangming Jihpao, 12 March 1957; Chang Tse-pei, "Correct Attitude toward the Testimony of the Accused", Kuangming Jihpao, 13 November 1956.
23. See Chou Heng-yuan, "On the Right of the Accused for Defense in Chinese Criminal Proceedure", Chengfa Yenchiu, 1956, No 3.
24. It should be mentioned that in the documents and materials drawn up in the organs of investigation only the terms "accused" and "defendant" are used in the meaning given by us.
25. See the speech by Chang Ting-cheng, op. cit.
26. See Article 12 of the Regulations on Arrests and Detentions.
27. See Article 2 of the same Regulations.
28. Materialy VIII ..., op. cit.
29. See Article 2 of the Regulations on Arrests and Detentions.
30. See Article 3 in the same regulations.
31. See the magazine People's Supervision, where articles on arrest proceedure have appeared regularly in numbers 3 through 9 in 1956.
32. Yu Ku, "Why Verification and Ratification by the People's Procurator's Office is Essential in Arresting Criminals", Kuangming Jihpao, 1 January 1957.
33. See Article 4 of the Regulations on Arrests and Detentions.

34. See Article 8 of the same Regulations.
35. See Articles 8 and 9 of the Regulations on Reeducation Through Labor.
36. See Article 37 of the Regulations.
37. See Yu Ku, op. cit.
38. See Article 36 of the Law on the organization of the ACAPR of the CPR and Article 18 of the Law on the organization of local APR and local people's committees of the CPR.
39. See Article 36 of the Law on the organization of the ACAPR.
40. See Article 18 of the Law on the organization of local APR and local people's committees.
41. See Article 11 of the Regulations on Arrests and Detentions.
42. See Article 7 of the same regulations.
43. See Article 12 of the same regulations.
44. See Articles 85, 89, and 90 of the Constitution.
45. See, for example, Article 12 of the Regulations on Arrests and Detentions.
46. Lo Jui-ching, op. cit., page 265.
47. See Materialy VIII ..., op. cit., page 266.
48. See Chao Wen-lung, op. cit.
49. ibid.
50. Article 9 of the Regulations on Arrests and Detentions.
51. Article 10 of the same regulations.
52. See, for example, Article 40 of the Regulations on Reeducation through Labor.
53. See, for example. Article 40 of the same regulations.
54. See Article 9 of the Regulations on Arrests and Detentions.
55. See Kuangming Jihpao, 13 November 1956.
56. See Mao Tse-tung, op. cit. Vol 3, page 403.
57. See Article 9 of the Regulations on Reeducation through Labor.
58. See Article 38 of the same Regulations.
59. See Kuangming Jihpao, 24 June 1956.
60. See Kou Ching-yen, op. cit.
61. See the magazine Kitay (China), 1956 (July).
62. The resolution is drawn up in the following manner:
Resolution on Discharge from the Obligation to be Turned Over to the Court

This procurator's office has conducted an investigation and is terminating the investigation in the case of _____
(name of accused)

On the basis of the materials gathered in this case, the following facts are established:

1) Established facts and evidence in the case are
2) listed here
3)
4)

On the basis of the above facts and in accordance with Article we have resolved to free the accused _____ (name) without further prosecution of the case.

If the law provides no instructions on the possibility of dropping prosecution of a case, the resolution contains the bases used for arriving at such a decision.

At the end of the resolution it is duly indicated if the institution, organization, enterprise or citizen who submitted the petition to institute criminal proceedings is not in agreement with the above resolution, they may petition for a second check of the materials by a higher procurator's office.

63. As an example, we can include the bill of indictment drawn up by the people's procurator's office of the Hsi Tan District of the City of Peiping.

Indictment by the People's Procurator's Office of the Hsitan District of the City of Peking

Bill of indictment No of _____ (seal) of the Peo- (date,year)
ple's Procurator's Office of the Hsitan District of the City of Peking.

Approved: _____ by the procurator of the (date of approval)
people's procurator's office of the Hsitan District of the City of Peking.

Name _____ (seal)

The accused _____ male, 34 years of age, native of the county of Ninang of _____ province; of merchant origin, has incomplete high school education, lives on _____ street in _____ district in Peking. Before the liberation he worked as a clerk, 2nd lieutenant in the enemy Japanese army, 10th division, store employee, assistant manager of the Ta-suan in the city of Shanghai.

After the liberation he worked as manager of the Tafeng transport office in Shanghai, and later was business agent for the Yulien transport office in Shanghai. In 1952, in October he was studying in a school for training commercial cadres in Eastern China; in March 1953 he was employed in the accounting department of the planning division of a Chinese food products company, also occupying the position of member of this firm's charity committee.

He has never served time, and is now under arrest..

The accused is charged with appropriating public funds (corruption).

After investigaion by our procurator's office the following _____facts are confirmed.

The accused _____ (name), from 1954 to June 1955, during the period he worked as member of the _____ charity committee of the Chinese food products company, making use of his position, appropriated funds from the charitable organization and the mutual aid fund in the sum of 1125 yuan 14 fen and three pieces of cloth.

Concrete facts are the following:

1. On 18 December 195 during the purchase of goods for charitable purposes for bench and office workers, he took an advance of 70 yuan from the executive division. After the sale of goods he returned to the executive division monies in the sum of 209 yuan 30 fen, 51 yuan 71 fen have not yet been collected, and the remaining 438 yuan 30 fen were spent on his own personal needs.

2. Between April and June 195 he appropriated 360 yuan while the money from the mutual aid fund for bench and office workers was in his keeping.

3. On 27 December 195 he sold 248 cans of local canned goods from the products division, after which he spent the entire sum of 219 yuan on his own needs.

4. On 30 September 195 he sold 84 cans of preserved fish for bench and office workers, but he did not turn in the sum of 37 yuan 50 fen..

5. On 11 March 195 the water economy division gave him 3 yuan 30 fen received from the sale of salt fish, which were also appropriated by him.

6. From February 195 to April 195 ,upon marketing products for bench and office workers, selling products on 30 occasions at increased prices, he appropriated a profit of 37 yuan 19 fen.

7. The accused testified that he often simply took goods and sold goods without making entries, that he appropriated 29 yuan 36 fen and 11 chi of material in three pieces.

In this manner, the accused _____ (name), making use of his position in order to satisfy his personal needs, appropriated a total of 1125 yuan 14 fen for himself, thus directly encroaching on the interests of the state. He hindered the economic development of the country and seriously violated the law.

The procurator's office, in the name of defending the laws in order to protect the country's socialist construct-

ion, demands stern punishment for the accused. On the basis of Sections 2 and 3, No 3, as well as No 17 of the Law on punishment for corruption, we request the people's court of the Hsitan District of the city of Peking to mete out severe punishment against the accused.

Investigator of the procurator's office
(name) (seal)

Appended to the bill of indictment:

1. List of persons to be summoned to court.

The accused _____ (name) is under arrest in the Hsitan District militia station.

Witnesses: _____ (names), residing in 1st Changmen Lane, No 42.

64. See Lunev, A. Ye., Sud, prokuratura i gosudarstvennyy kontrol' v KNR (The Court, Procurator's Office and State Control in the CPR), Moscow, 1956, pages 51-52.
65. See Li Pao-yu, Kao Hsin-tien and Wang Chun-chang, "Work in Verifying Materials of Indictment of the People's Procurator's Office", Chengfa Yenchiu, 1955, No 2.

CHAPTER THREE

1. See Article 9 of the Law on the organization of the people's courts.
2. See Chang Fu-hai, "Work on Judicial Supervision of the People's Procurator's Office", Chengfa Yenchiu, 1955, No 2.
3. See Article 15 of the Law on the organization of the people's procurator's office.
4. Legal documents submitted by the people's court in criminal proceedure in the CPR are considered genuine if they are signed by a judge (these documents always remain in the case) and when they are printed and certified by the seal of the court (these documents are delivered to the procurator and the accused). A document is considered to be a copy if it has been printed from an original document, signed by a judge, but not certified by seal (these documents are issued, for example, to the civil plaintiff and the respondent, if the accused is not the respondent).
5. In legal literature the opinions of several practical and scientific workers have been expressed, who consider that the bill of indictment should be delivered to the accused by the organs of investigation in send-

ing the case to court, and not after the preparatory court session (see "Some Problems of Criminal-Proceedural Law", 17 December 1955, published by the People's Supreme Court of the CPR). However, this opinion is presently not supported in the practice of the investigative and judicial organs.

CHAPTER FOUR

1. For certain categories of cases handled by one judge, the institution of public indictment has been temporarily preserved.
2. Article 14 of the Law on the organization of the people's procurator's office.
3. See Article of the Law on the organization of the People's Procurator's Office.
4. See Article 4 of the same law.
5. In Chinese criminal proceedure there are no cases of private-public prosecution.
6. See the Temporary Rules on the organization of people's conciliation commissions of 25 February 1954.
7. See Chou Heng-yuan, op. cit.
8. See Tao Tse-chiang, "An Attorney Helped Settle the Hanhuei Case", Kuangming Jihpao, 14 January 1957.
9. At present the proceedure of conducting the court session in the courts of the CPR is regulated by the Temporary Rules on trying criminal and civil cases, issued by the Judicial Committee of the People's Supreme Court of the CPR in 1957.
10. Article 3 of the Law on the organizatinn of the people's courts.
11. Mao Tse-tung, op. cit. Vol 1 page 511.
12. ibid., page 520.
13. See Articles 9 and 10 of the Law on the organization of the people's courts.
14. See, for example, Chin Tsao, "A Sentence Must Be Well Written", Kuangming Jihpao, 20 January 1957.
15. See Article 11 of the Law on the organization of the people's courts.

CHAPTER FIVE

1. See Article 11 of the Law on the organization of the people's courts. It should be explained that in the practice of the people's courts of the CPR decisions are not appealed separately; if a party finds it necessary to

appeal the decision of the court of the first instance, it indicates that it is simultaneously appealing the decision in the cassation appeal or protest, in appealing the sentence. The court of the second instance simultaneously examines the sentence and the decision.
2. See the speech by Tung Pi-wu, op. cit.
3. See Article 11 of the Law on the organization of the people's courts.
4. Measures are being worked out in China to include the military tribunals in the general court system and to form a military college in the People's Supreme Court.
5. See Article 11 of the Law on the organization of the people's courts and Article 15 of the Law on the organization of the people's procurator's office.
6. Article 15 of the Law on the organization of the People's Procurator's Office.
7. See Article 4 of the same law.
8. See He Chan-chun, "Division of Functions between courts of the First and Second Instances", Chengfa Yenchiu, 1956, No 2.

CHAPTER SIX

1. Speech by Tung Pi-wu, op. cit.
2. See Article 12 of the Law on the organization of the people's courts.
3. See Article 12 of the Law on the organization of the People's courts.
4. See Article 12 of the same Law and Article 16 of the Law on the organization of the People's Procurator's Office.
5. "The Work of the People's Courts During the Past Year", Jenmin Jihpao, 27 June 1956.
6. See the article "A Case Which was Incorrectly Tried Three Times", Kuangming Jihpao, 10 January 1957.

CHAPTER SEVEN

1. See Article 11 of the Law on the organization of the people's courts and the resolution by the 4th session of the ACAPR of the CPR -- 1st Convocation -- of 15 July 1957.
2. See the speech by Lo Jui-ching, op. cit., page 261. Materialy VIII ...
3. Tung Pi-wu, op. cit.
4. Liu Shao-chi, "Political Report by the CC of the CPC to the VIII Party Congrees", Materialy VIII ..., op. cit., page 57.
5. ibid.

1. See Article 6 of the Regulations on Reeducation through Labor.
2. See Articles 1, 4, and 25 of the same regulations.
3. Report by Lo Jui-ching at the 222-nd session of the GAS of the CPR of 28 August 1954, "Elucidation of the Draft Regulations on Corrective Labor Institutions in the CPR", Jenmin Jihpao, 7 September 1954.
4. ibid.
5. Kou Ching-yen, op. cit.
6. A study of the types of punishment used by the people's courts of the CPR made by Li Chi in the work What Types of Punishment Should be Provided for in Criminal Law in the CPR, where Li Chi makes proposals on the types of punishment which, in his opinion, should be provided for in criminal law in the CPR (See Chengfa Yenchiu, 1957, No 1).
7. See Article 3 of the Regulations on reeducation through Labor.
8. See Article 5 of the same Regulations.
9. See Articles 3 and 8 of the same regulations.
10. See Article 38 of the Law on the organization of the People's Courts.
11. Shih Yu, op. cit.
12. See Article 13 of the Regulations on reeducation through Labor.
13. See below for the proceedure of establishing supervision.
14. See Jenmin Jihpao, 17 November 1956.
15. See Articles 8 and 18 of the Law on the organization of the People's Procurator's Office.
16. See Article 16 of the same law.

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